109-232

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 130.

THE ALABAMA GOLD LIFE-INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

MARY ALICE NICHOLS IN HER OWN BEHALF AND AS GUARDIAN OF HER MINOR CHILDREN, W. ELY NICHOLS, C. HALLY NICHOLS, THOMAS P. NICHOLS, AND FRANK NICHOLS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

FILED OCTOBER 16, 1880.

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1 In the circuit court of the United States for the eastern district of Texas, in the fifth circuit, holding sessions at Galveston, Texas.

MARY ALICE NICHOLS, SURVIVING WIFE OF Charles Nichols, deceased, in her own behalf, and as guardian of her minor children, W. E. Nichols, C. Hally Nichols, Thomas P. Nichols, and Frank Nichols, plaintiffs,
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY of Mobile, Alabama, defendant.
} Law No. 1078.

Be it remembered, that in the above entitled and numbered cause, lately pending in said court, in which final judgment was rendered at the regular November term, 1879, of said court, to wit, on the 9th day of December, A. D. 1879, the Hon. Amos Morrill, judge of the district court of the United States for the eastern district of Texas presiding, the following proceedings were had and taken in said court, to wit:

2 TRANSCRIPT FROM DIST. COURT OF GALVESTON CO.—FILED DECEMBER 2D, 1878. 9685.

Petition.—Filed Sept. 25th, 1878.

THE STATE OF TEXAS,
Galveston County:

In district court for Galveston County, Texas, to Oct. term, 1878.

To the hon. district court in and for said county and State:

The petition of Mary A. Nichols and W. Ely Nichols and C. Hally Nichols, and Thomas P. Nichols and Frank Nichols, the four last named of whom are minors, under the age of twenty-one years, and sue by their mother, the said Mary A. Nichols, who is the guardian of the persons and estates of the said minors, duly appointed and qualified under the authority of the hon. county court of Galveston County aforesaid, all of whom reside in said State and county, as plaintiffs, complaining of the Alabama Gold Life-Insurance Company of Mobile, in the State of Alabama, a corporation created by the laws of the State of Alabama by the above name and style, having authority to make and issue policies of life-insurance, and having its principal office and place of business in the city of Mobile, in the State of Alabama, and hereinafter styled defendant, respectfully represents:

That the said Mary A. Nichols is the surviving wife of Charles
3 Nichols, late of Galveston County, Texas, now deceased.

That the said W. Ely Nichols and C. Hally Nichols and Thomas P. Nichols and Frank Nichols are the children of the said Charles Nichols, deceased, and as such were interested in and had an insurable interest in the life of the said Charles Nichols.

That on the thirty-first day of January, A. D. 1876, the said defendant, for the consideration hereinafter mentioned, made, executed, and delivered

1 In the circuit court of the United States for the eastern district of Texas, in the fifth circuit, holding sessions at Galveston, Texas.

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That the said Mary A. Nichols is the surviving wife of Charles
3 Nichols, late of Galveston County, Texas, now deceased.

That the said W. Ely Nichols and C. Hally Nichols and Thomas P. Nichols and Frank Nichols are the children of the said Charles Nichols, deceased, and as such were interested in and had an insurable interest in the life of the said Charles Nichols.

That on the thirty-first day of January, A. D. 1876, the said defendant, for the consideration hereinafter mentioned, made, executed, and delivered

to the said Charles Nichols, then living, a policy of insurance on the life of said Charles Nichols for the term of his natural life, and commencing on the day and year last aforesaid, for the benefit of the said Mary A. Nichols, the wife of the said Charles Nichols, and the children of the said Charles and Mary A. Nichols, whose names have been heretofore stated as plaintiffs, wherein and whereby the said defendant undertook and promised in effect, among other things, to pay to the plaintiffs the sum of five thousand dollars within ninety days after due notice and proof of interest and of the death of said Charles Nichols, deducting therefrom all credits for premiums on said policy unpaid at the time, together with any balance of the year's premiums remaining unpaid.

The said policy of insurance was issued in consideration of the representations made to the Texas Mutual Life-Insurance Company, of Galveston, by application dated 23d day of April, 1873, and upon
4 further consideration of the surrender of the Texas Mutual Life-Insurance Company's policy No. 638, for the sum of five thousand dollars in lawful money of the United States, dated the 23d day of April, 1873, issued upon the life of said Charles Nichols, and the *and the* further consideration, price of the annual premium, of one hundred and two dollars and twenty cents, to be paid on the 23d day of April (or within thirty days thereafter) in each and every year during the continuance of the said policy, the first of the said annual premiums falling due on the 23d day of April, 1876.

And the said plaintiffs allege that the said annual premiums called for by the said policy of insurance were each and every one paid, according to the tenor and effect of the said policy, to the said defendant in cash as they respectively became due and payable.

The plaintiffs further allege that said policy of life-insurance was made, executed, and delivered as aforesaid by the proper officers of the said defendant, and in all respects in the form and in accordance with the usage of said defendant, which said policy of insurance is herewith filed as an exhibit, X, and plaintiffs ask that the same be considered as a part of this petition.

Petitioners allege that the said Charles Nichols died on, to wit, the 20th day of April, 1878, while the said policy of insurance was in full force and effect.

5 That his death did not occur from any cause which would have avoided said policy.

That the said Charles Nichols, in his life-time, did observe and perform all and each of the duties and obligations imposed upon him by the terms and conditions of said policy of insurance.

Plaintiffs allege that after the death of the said Charles Nichols, and as soon as practicable, to wit, on the 1st day of June, A. D. 1878, the said plaintiffs did make out and furnish to the said defendant, in accordance with the terms of said policy of insurance, what is denominated a "preliminary proof," containing due notice and proof interest and of the death of the said Charles Nichols, and of the time and place thereof.

That the said Mary A. Nichols is the surviving wife of the said Charles Nichols, and that her co-plaintiffs are the children of the said Charles Nichols and the said Mary A. Nichols, his wife, and the issue of their said marriage, and that the plaintiffs are the beneficiaries of said policy of insurance.

That by reason of the premises said defendant became liable to pay, and undertook and promised to pay, to the plaintiffs, within ninety days after due notice and proof of interest, and of the death of said Charles Nichols, to wit, on the first day of September, A. D. 1878, the said sum of five thousand dollars, according to the tenor and effect of the said policy of insurance, besides interest thereon at the rate of eight per cent. per annum.

Plaintiffs allege that at the expiration of ninety days after the said notice of loss and proofs of death and interest were furnished as aforesaid, the plaintiffs demanded payment of the aforesaid sum of money specified in said policy of insurance from the defendant, and the said defendant then and there, to wit, on the 1st day of September, 1878, refused to pay said sum of money or to adjust and pay the said loss aforesaid.

That by reason of the refusal of the defendant to pay the amount of said policy within ninety days after due notice and proof of interest, and the death aforesaid, the said defendant became liable to pay to the plaintiffs, in addition to the said loss, damage as called for in said policy of insurance, damage for such default and failure to the extent of twelve per cent. on the full amount mentioned in said policy, to wit, twelve per cent. on five thousand dollars, making in the aggregate for damages for such refusal and failure to pay said policy the further sum of six hundred dollars.

And also the said defendants, by reason of the premises, became and is liable for all reasonable attorneys' fees for prosecution of plaintiffs' claim on said policy herein.

That reasonable attorneys' fees herein is of the value of five hundred dollars, for all of which the defendant became bound and was
7 and liable to pay to the plaintiffs, and on the day and year last aforesaid promised to pay to the plaintiffs, but which they have refused to do to the damage of the plaintiffs in the aggregate sum of ten thousand dollars.

That defendant has wholly refused, and still refuses, though often requested, to pay either and all of the aforesaid sums of money or any part thereof to the plaintiffs.

Wherefore an action hath accrued to the plaintiffs, to wit:

That the said defendant company is a foreign company, incorporated without the State, to wit, in the State of Alabama, but is doing business within this State under and by virtue of the authority contained in the act of the legislature of the State of Texas entitled "An act to regulate life and health insurance companies, and all associations, partnerships, or individuals doing life and health insurance business incorporated within or without the State of Texas," approved May 27, 1874.

That William Sumpter Harris is the duly authorized agent of defendant, residing in the county of Galveston, Texas, upon whom, under the laws of the State aforesaid, process can be served against said company.

Wherefore premises considered, the plaintiffs pray for process herein to be served on said defendant's duly authorized agent, William Sumpter Harris, and that they have judgment for the amount of money
8 specified in said policy, to wit, five thousand dollars, with eight per cent. interest thereon, per annum, accrued and to accrue thereon, and for further special damage of six hundred dollars for refusal to pay said death loss, and the further special damage for reasonable attorney's

fees of five hundred dollars, and for their general damage, and for all costs of suit, and for all other further and general relief which the nature of the case stated and proved will, under the law, authorize the court to grant, and as in duty bound, &c., &c.

WILLIE & CLEVELAND,
Att'ys for Plaintiffs.

Petition, Exhibit X.—Copy of policy of insurance.

THE ALABAMA GOLD LIFE-INSURANCE COMPANY, OF MOBILE.

Number, 6291.] [Amount, $5,000. 00.
Age, 36 years.] [Premium, $102.20
Term, life.] [When due, April 23d.

This policy of insurance witnesseth: That The Alabama Gold Life-Insurance Company, of Mobile, in consideration of the representations made to the Texas Mutual Life-Insurance Company, of Galveston, by application dated the twenty-third day of April, 1873, and upon
9 the faith of which this policy is issued, and in further consideration of the surrender of The Texas Mutual Life-Insurance Company's policy No. 638, for the sum of five thousand dollars in lawful currency of the United States, dated the twenty-third day of April, 1873, issued upon the life of Charles Nichols, of Galveston, County of Galveston, State of Texas, and the annual premium of one hundred and two dollars and twenty cents, in lawful money of the United States, to be paid on the twenty-third day of April, or within thirty (30) days thereafter, in each and every year, during the continuance of this policy, the first of the said annual premiums falling due the (23d) twenty-third day of April, eighteen hundred and seventy-six, do assure the life of Charles Nichols, of Galveston, County of Galveston, State of Texas, for the sole use and benefit of Mary Alice Nichols, wife, and the children of Charles and Mary Alice Nichols, as beneficaries, in the amount of five thousand dollars in lawful money of the United States.

And the said company do hereby promise and agree to and with the said above-mentioned beneficiaries, or their executors, administrators, assigns, or guardians of children under age, well and truly to pay, or cause to be paid, at the city of Mobile, the said sum insured to the said above-mentioned beneficiaries, or their legal representatives, within ninety days after due notice and proof of interest (if assigned or held as security)
10 and of the death of said party whose life is insured by this policy, deducting therefrom all credits for premiums on this policy unpaid at the time, together with any balance of the year's premium remaining unpaid:

Provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is accepted by the assured upon these express conditions, that the said insured is hereby permitted and limited to reside and travel by the usual modes of conveyance, either land, river, lake, or coastwise, in any portion of the United States and Territories, the settled portions of the Canadas, Nova Scotia, and New Brunswick; also in times of peace to cross and recross the Atlantic Ocean in Government or first-class steamers or sailing-vessels, and travel and reside within that

portion of Europe bounded by the fortieth and sixtieth degrees of latitude and the twentieth (20th) degree of longitude east from Greenwich; and if the said insured shall pass beyond the described limits, or shall without the consent of this company engage personally in blasting, mining, submarine operations, or in the production of inflam'able or explosive substances, or in working or managing a steam engine in any capacity, or as a mariner, engineer, fireman, conductor, or laborer in any capacity upon any sea, sound, inlet, river, lake, or railroad, or shall enter any military or naval service whatsoever (the militia when not in actual service
11 excepted), or if he shall die by delirium tremens, in consequence of a duel, or in violation of the laws of any nation or government where he may be, then and in every such case this policy shall be null and void.

And it is also understood and agreed that in case of the impairment of health of the person upon whose life this policy is issued by intemperance, or by the practice of any vicious habit tending to shorten life, this company shall have the right to cancel this contract during the life-time of the insured by the payment or tender of payment to the beneficiaries herein-above named of the net value of the policy, determined by the American tables of mortality, and six per cent. interest.

And it is also understood and agreed that in case of the death of the person upon whose life this policy is issued from or in consequence of the violation of any condition or agreement contained in this contract, or in the application made to the Texas Mutual Life-Insurance Company, or in the policy for which this is substituted as above stated, this company shall not be liable beyond the payment of the net value of this policy, determined by the American experience table of mortality, and six per cent. interest.

And it is also understood and agreed, in case of death of insured during the continuance of this policy, full proofs of death shall be presented to the company without unnecessary delay, and that if payment
12 is refused in consequence of the alleged violation of any condition or agreement herein contained, or contained in the application made to the Texas Mutual Life.Insurance Company, or in the policy for which this is substituted as herein-above specified, action shall be brought against the company within three months after such refusal, or all claims therein shall be forever barred.

And it is also understood and agreed by the within assured to be the true intent and meaning hereof, that if the declaration or any part thereof made by or for the said insured in the application for the Texas Mutual Life-Insurance Company's policy for which this is substituted, and bearing date the twenty-third day of April, 1873, and upon the faith of which this policy is made shall be found in any respect untrue, then and in every such case this policy shall be null and void, or in case the said assured shall not pay the said premiums on or before the date mentioned for the payment thereof, and the interest annually on allcredits on account of premiums until the same are fully paid up, then and in every such case this policy shall be void.

And it is also understood and agreed, that when all premiums upon this policy shall have been paid for three years or more (meaning from the date of the Texas Mutual Life Insurance Company's policy for

13 which this is substituted) and any subsequent premiums shall have become due, and not be paid, a paid-up non-participating policy will be issued for an equitable amount, provided that this policy be surrendered and application made for said paid-up policy within three months from the expiration of the time for which all the premiums have been paid; otherwise this policy shall become null and void.

And it is further agreed, that in every case when this policy shall cease or be or become void, all payments made thereon shall be forfeited to said company.

In no case shall this policy be force until the actual payment of the premium herein named to an authorized agent of the company.

In case this policy is assigned a copy of the assignment shall be given to this company, and in event of the death of the insured during the continuance of the assignment the company is only liable for the amount of interest proved by the assignee, within the limits of the policy.

In witness whereof the president of the said Alabama Gold Life-Insurance Company has hereunto subscribed his name, attested by the secretary, and caused the corporate seal of said company to be affixed, at their office, in the city of Mobile, and State of Alabama, this the twenty-first day of January, one thousand eight hundred and seventy-six.

[SEAL.] C. E. THAMES, *President.*

T. N. FOWLER, *Secretary.*

14 Not binding unless signed by J. W. Sylvester, agent, at Galveston, Texas.

(On side of policy face:)

☞ Policies issued for the benefit of married women or minors are positively not assignable.

In event of assignment of this policy the assignee is only vested with rights to the extent of h insurable interest at date of maturity of said policy, provided said interest be not in excess of the amount of this policy. The residue, if any, reverting to the company.

(On reverse side of policy:)

Non-participating.

☞ To make the intent, meaning, and purpose of the parties to this contract clear and indisputable, it is hereby specifically agreed that in event of the death of the within assured during the continuance of the within policy (anything contained therein to the contrary notwithstanding), and the refusal of this company to pay the amount that may be claimed as due thereon, after the expiration of ninety days from date of satisfactory proof of the death of said insured, filed at the office of this company, then this company shall not be permitted in law or equity to plead any defence on the within policy, inconsistant with and not legally warranted by the terms, stipulations, and agreements contained in the Texas Mutual Life-Insurance Company's policy, for which this policy is substituted as hereinafter set forth.

15 It is further specially agreed that in event any claim arising on

the within policy is contested by this company for any alleged cause whatever, then the application for the said Texas Mutual Life-Insurance Company's policy, and the Texas Mutual Life-Insurance Company's policy as within described, and for which the within policy is substituted as stated, shall be jointly and severally taken and accepted as the real contract between the company and the insured in accordance herewith.

It is further specially agreed that in event this company for alleged violation of any of the terms or conditions of the policy, for which this is substituted as stated, shall refuse to pay (in accordance with the terms herein set forth) any claim set up or arising on the within policy, then this company shall produce in court the said within-described Texas Mutual Life-Insurance Company's policy, as the grounds and basis of their defense against said claim, or be forever barred against any defense on the within policy, either in law or equity.

Signed by the president of the said Alabama Gold Life-Insurance Company; attested by their secretary the place and date herein written.

C. E. THAMES, *President.*

T. N. FOWLER, *Secretary.*

16 *Citation.—Issued September 27th,* 1878.

THE STATE OF TEXAS,
County of Galveston:

In district court, October term, A. D. 1878.

The State of Texas, to the sheriff or any constable of Galveston County, greeting:

You are hereby commanded to summons the Alabama Gold Life-Insurance Company through its agent in Galveston, Texas, William Sumpter Harris, if to be found in your county, to be and appear before the honorable the judge of the district court for the twenty-sixth judicial district, at a district court to be holden in and for the county of Galveston, at the court-house, in the city of Galveston, on the 1st Monday in October, A. D. 1878, to answer the complaint of Mary Alice Nichols, W. Ely Nichols, C. Hally Nichols, Thos. P. Nichols, and Frank Nichols, minors, vs. the Alabama Gold Life-Insurance Company, as set forth in the petition, of which said petition you will serve the said The Alabama Gold Life-Insurance Company, through William Sumpter Harris, agent, with the ac-
17 companying copy, and also with a copy of this writ.

Herein fail not, and due return make of this writ.

Issued 27th day of September, 1878.

Witness J. P. Harrison, clerk of the district court, in and for said county of Galveston, with the seal of said court, this 27th day of Sept., A. D. 1878.

[SEAL.] (Attest:) J. P. HARRISON,
Clerk District Court, Galveston Co.

Filed 3d day of October, A. D. 1878.

Return of sheriff on citation.

Received this writ on the 27th day of September, 1878, and I executed the same on the 27th day of September, 1878, by delivering to the within-named defendant, The Alabama Gold Life-Insurance Company, through its agent, at Galveston, Wm. S. Harris, in person, in the county of Galveston, a true copy of this writ, and a certified copy of the plaintiff's petition which accompanys the same.

C. JORDAN,
Sheriff Galveston County,
By W. H. PROWSE,
Deputy.

18 *Original answer.—Filed Oct. 11th, 1878.*

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY. } No. 9685.

Now comes the defendant in above cause, and demurs to the plaintiffs' petition, and says that said petition and the matters and things therein contained, as therein stated and set forth, are wholly insufficient in law, and of this defendant prays the judgment of the court.

And further answering this defendant denies all and singular the allegations in plaintiffs' petition, and says that the same are untrue.

BALLINGER, JACK & MOTT,
Att'ys for Defendant.

Petition for removal to United States circuit court.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE CO. } No. 9685.

Suit pending in the district court of Galveston County, Texas.

To the honorable W. H. Stewart, judge of said court, holding sessions as aforesaid:

19 The petition of the Alabama Gold Life-Insurance Company represents that there has been commenced in the district court of Galveston County, State of Texas, a certain suit in which Mary A. Nichols, who sues for herself, and as *and as* guardian of the persons and estates of her children as follows: W. Eley Nichols, C. Hally Nichols, Thomas P. Nichols, and Frank Nichols are plaintiffs, and said Alabama Gold Life-Insurance Company is defendant.

That the said suit is for the recovery of a sum of money exceeding the sum of five hundred dollars, and that the amount in dispute in said suit exclusive of costs exceeds the sum of five hundred dollars, for that the said suit is upon a policy of life-insurance for the *the* sum of five thousand dollars alleged to be due by said defendant to said plaintiff.

That the said suit is now pending in the district court of Galveston County, State of Texas, and is numbered 9685 on the docket of said court.

That the suit is by citizens of the State of Texas, wherein said suit is brought, and against a citizen of another State, to wit, the State of Alabama, for that the said Mary A. Nichols, who sues for herself, and as guardian of W. Eley Nichols, C. Hally Nichols, Thomas P. Nichols, and Frank Nichols, the plaintiffs therein, are citizens the State of Texas, and the said corporation, The Alabama Gold Life-Insurance Company, is a citizen of the State of Alabama, under the laws of which State
20 it was organized and incorporated.

Petitioner represents that the controversy is wholly between citizens of different States, namely, between the plaintiffs, citizens of the State of Texas, and the defendant, a citizen of the State of Alabama. That the said defendant, The Alabama Gold Life-Insurance Company, is actually interested in said controversy, and that the said controversy can be fully determined as between them the said plaintiffs and defendant.

The said Alabama Gold Life-Insurance Company represents that the present term of the district court of Galveston County, said State, is the first term at which said cause could *could* be first tried, and files this petition before the trial thereof, and tenders to this court a bond with good and sufficient surety for entering into the circuit court of the United States for the eastern district of Texas, on the first day of its next session, a copy of the record in said suit, and for paying all costs that may be awarded by the said circuit court of the United States for the eastern district of Texas if said court shall hold that the said suit shall have been wrongfully or improperly removed thereto.

Wherefore the said Alabama Gold Life-Insurance Company prays that this court accept this petition and the bond filed herewith, and that it proceed no further with this suit, and that it order that the said suit be
21 removed to the circuit court of the United States for the eastern district of Texas.

WAUL & WALKER,
For Ala. Gold Life-Ins. Co.
BALLINGER, JACK & MOTT,
For Ala. Gold Life.

Bond for removal.—Filed Oct. 31*st*, 1878.

MARY A. NICHOLS ET AL.
vs.
ALABAMA GOLD LIFE-INSURANCE COMPANY. } No. 9685.

Suit pending in the district court of Galveston County, Texas.

Whereas a certain suit has been commenced and is now pending in the district court of Galveston County, State of Texas, numbered 9685, on the docket of said court, and wherein Mary A. Nichols, W. Eley Nichols, C. Hally Nichols, Thomas P. Nichols, and Frank P. Nichols, Mary A. Nichols, sueing for herself and as guardian, are plaintiffs, all of whom are citizens of the State of Texas, and The Alabama Gold Life-Insurance Company, a citizen of the State of Alabama, is defendant; and whereas the said defendant in said suit, The Alabama Gold Life-Insurance Company, is desirous of removing the said cause into the circuit court of the United States for the eastern district of Texas:

Now, therefore, we, the Alabama Gold Life-Insurance Company, as principal, and W. S. Griffin *a* J. P. Davie as sureties, do ac-
22 knowledge ourselves held and firmly bound in the sum of two hundred dollars, for the payment of which we bind ourselves, our heirs, executors, and administrators unto the said plaintiffs in the above-styled suit, conditioned that the said Alabama Gold Life-Insurance Company shall enter in the circuit court of the United States for the eastern district of Texas, at Galveston, on the first day of its next session, a copy of the record in the above-sty'ed and numbered suit, and that the said Alabama Gold Life-Insurance Company shall pay all costs that may be awarded by the said circuit court of the United States for the eastern district of Texas, if said court shall hold that said suit was wrongfully or improperly removed thereto.

In witness whereof we hereunto set our hands and scrawls for seals, on this the 31st day of October, A. D. 1878.

ALABAMA GOLD LIFE-INSURANCE COMPANY,
By W. S. HARRIS, *Agent.* [SEAL.]
J. P. DAVIE. [SEAL.]
W. S. GRIFFIN. [SEAL.]

Order of removal.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INS. CO. } No. 9685. October 31, 1878.

On this day came the defendant, by its attorney, and having
23 filed its petition and bond for the transfer & removal of this cause to the circuit court of the United States for the eastern district of Texas, the said bond and petition were received. And it is therefore ordered by the court that this cause be, and is hereby, transferred to the circuit court of the United States for the eastern district of Texas, the 5th circuit, at Galveston, as provided in the several acts of Congress, as made and provided in such cases, and the clerk of this court will make the necessary transcript of all proceedings had in this cause, and send the same, duly certified, to the said United States circuit court; and it is further ordered that this court proceed no further in the consideration of this cause.

THE STATE OF TEXAS,
County of Galveston:

I, J. P. Harrison, clerk of the district court in and for the county of Galveston and State aforesaid, do hereby certify that the above and foregoing 22 pages contains a true and correct transcript of the record of all the proceedings had in this court, in cause No. 9685, entitled Mary A. A. Nichols et al. vs. The Alabama Gold Life-Insurance Company, as the same now appears of record and on file in my office.

In witness whereof I have hereto set my hand and affixed the

24 seal of said court, at office in the city of Galveston, this the 21st day of November, A. D. 1878.

[SEAL.]

J. P. HARRISON,
Clerk Dist. C't Galv. Co.,
By A. B. HARRISON,
Deputy Clerk.

The foregoing transcript from district court of Galveston County, endorsed as follows, to wit: "C. L. 1078. Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Co. Transferred to the United States court by the Alabama Gold Life-Ins. Co., defendant. Waul & Walker, att'ys for def't. Filed in U. S. circuit court, 2d day of Dec'r, 1878. C. Dart, clerk."

Original answer filed in State court, Oct. 11, 1878.—(*Not marked filed in this court.*)

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY. } No. 9685.

Now comes the defendant in the above cause and demurs to
25 plaintiffs' petition, and says that said petition and the matters and things therein contained, as therein stated and set forth, are wholly insufficient in law, and of this defendant prays the judgment of the court.

And, further answering, this defendant denies all and singular the allegations in plaintiffs' petition, and says that the same are untrue.

BALLINGER, JACK & MOTT.
Att'ys for Defendant.

The foregoing original answer endorsed thus: "No. 9685. Mary A. Nichols et al. vs. Alabama Gold Life-Insurance Co. Original answer. Filed October 11, 1878. J. P. Harrison, cl'k D. C. G. Co. Ballinger, Jack & Mott."

Appearance of defendant.—From the minutes, December term, December 2d, 1878.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INS. CO. } 1078.

The defendant in this cause, having filed in this court a transcript of the proceedings in this cause from the district court of the State of
26 Texas, of Galveston Co., whence the same was removed into this court. Now, on this, the first day of the present term, comes the said defendant, by its counsel, Messrs. Waul & Walker, and enters it' appearance in this cause in this court.

Order for pl'ffs to deposit—From the minutes, December term, December 9th, 1878.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY. } 1078.

Upon motion of the clerk of this court, and in accordance with the rules of this court, it is ordered that the plaintiffs be, and they are hereby, required to deposit with the clerk, as a payment on the costs of the marshal and the clerk incurred at the instance of the plaintiffs, the sum of $25.00, and that such deposit be made forthwith.

Order for def'ts to deposit—From the minutes, December term, December 9th, 1878.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY. } 1078.

Upon motion of the clerk of this court, and in accordance with the rules of this court, it is ordered that the defendant be, and it is hereby, required to deposit with the clerk, as a payment on the costs of the marshal
27 and the clerk incurred at the instance of the defendant, the sum of $10.00, and that such deposit be made forthwith.

Interrogatories to J. J. Gregory.—Filed December 23d, 1878.

Circuit court United States, eastern district of Texas.

MARY A. NICHOLS ET AL.
vs.
ALABAMA GOLD LIFE-INSURANCE COMPANY. } No. 1078.

The plaintiffs in the above-entitled suit, or their attorneys of record, Mess. Willie & Cleveland, of Galveston, Texas, will please take notice that five days after the service of a copy of the following interrogatories to J. J. Gregory, of Fayette County, Texas, a witness for defendant in the above-entitled cause, we will apply to the clerk of the circuit court of the United States for a commission to take the answers of said J. J. Gregory to said interrogatories.

WAUL & WALKER,
Att'ys for Def't.

Int. 1st. What is your profession? How long have you practiced it? Where do you reside; and how long have you resided there? Where have you last resided before acquiring your present domicile; and how long did you reside at your last residence?

Int. 2nd. Were you acquainted with Charles Nichols during his lifetime; if so, how long were you acquainted with him? Where did

28 he live during your acquaintance with him; and how long did he live there?

Int. 3rd. Were you acquainted with the family of the said Charles Nichols; and when were you acquainted with said family, and during what time? State the names and the relationship of all the members of his family with whom you were acquainted to said Charles Nichols.

Int. 4th. If you have answered that you know any of his relations, state how many brothers and sisters of said Nichols you know, if any; and state if you knew his mother and father, or either of them; and where and for how long.

Int. 5th. Did you ever have any professional relations with any near relative of said Charles Nichols? If so, state what relative or relatives, and where.

Int. 6th. If you have answered that you ever attended the relatives of said Charles Nichols as a physician, state for what disease or malady; state how many and the names of those you have so attended, if any; and state the kind of disease from which such relative or relatives were suffering.

Int. 7th. State, if within your knowledge, if any near relative of Charles Nichols was ever affected with any pulmonary complaint; if yea, state the name of such relative or relatives; and state as near as you may be able the time when such relative or relatives were so afflicted; and state the age of such relative or relatives.

29 Int. 8th. State if you know of the death of any near relative or relatives of said Charles Nichols, and as near as you may be able the date of such death; state the nature of the disease which caused the death of such relative or relatives, and the name or names of the party or parties deceased and their relationship to said Charles Nichols.

Int. 9th. State fully anything and everything you may know concerning any pulmonary complaint with which any of the near relatives of said Charles Nichols may have been afflicted; state, if within your knowledge, if any near relative of said Charles Nichols was ever afflicted with or died of consumption, giving the name or names of such relative or relatives and the date of such affliction or death, or both, as nearly as you may be able.

WAUL & WALKER,
Att'ys for Def't.

The foregoing interrogatories endorsed as follows, to wit: "1078. Mary A. Nichols et al. vs. Ala. Gold Life-Ins. Co. Interrogatories to J. J. Gregory. Filed Dec'r 23, '78. C. Dart, clerk, by James T. Spann, dept."

30 *Writ to serve interrogatories to J. J. Gregory.—Issued December 23d,* 1878.

UNITED STATES OF AMERICA,
Eastern District of Texas:

In United States circuit court at Galveston.

MARY A. NICHOLS ET AL.
vs.
ALABAMA GOLD LIFE-INSURANCE COMPANY. } No. 1078.

The President of the United States to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to serve Mary A. Nichols et al., the plaintiffs in the above-entitled cause, or their attorneys of record, Messrs. Willie & Cleveland, with the accompanying certified copy of interrogatories propounded in said cause by the defendant to J. J. Gregory, of Fayette County, a witness for defendant; and you will also serve at the same time the notice by defendant to said plaintiffs attached to and contained in said copy of interrogatories.

Herein fail not, and due return of this writ make.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the eastern district of Texas, at Galveston, this 24th day of December, A. D. 1878.

[SEAL.]

C. DART,
Clerk U. S. Circuit Court, E. D. T., G.,
By JAMES T. SPANN, *Dept.*

31 *Marshal's return.*

Received this writ on the 23d day of December, 1878, and executed the same on the 26th day of December, 1878, by delivering to Willie, of the firm of Willie & Cleveland, in person, at Galveston, in my district, the accompanying copy of interrogatories and notice named in this writ, certified by the clerk of this court.

WM. J. PHILLIPS,
U. S. Marshal, Eastern District of Texas,
By W. T. CLAYTON, *Deputy.*

The foregoing writ endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company. Writ to serve interrogatories. Issued Dec'r 23, 1878. C. Dart, clerk, by James T. Spann, dept. Ret'd & filed Dec'r 26, '78. C. Dart, clerk, by James T. Spann, dept."

32 *Interrogatories to W. C. McGowan.—Filed December 23d, 1878.*

Circuit court of the United States, eastern district of Texas.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY. } No. 1078.

The plaintiffs in the above-entitled case, and Mess. Willie and Cleveland, of Galveston, Texas, will please take notice that five days after the service of a copy of the following interrogatories to McGowan, of Travis County, Texas, a witness for defendant in the above-entitled cause, we will apply for a commission to the clerk of the circuit court of the United States for the eastern district of Texas to take the answers of said W. C. McGowan to said interrogatories.

WAUL & WALKER,
Att'ys for Def't.

Int. 1st. What is your profession; how long have you practiced it, and where?

Int. 2nd. Were you acquainted with Charles Nichols during his lifetime, and were you acquainted with any of his near relatives; if so, where, and during what time?

Int. 3d. If you were acquainted with any of his near relatives, state their names and their relationship to him, said Charles Nichols, and state how many brothers and sisters of said Charles Nichols you knew, and where you knew them; for how long? Did you know his mother and father, or either of them; if so, at what time?

33 Int. 4th. Did you ever have any occasion or opportunity of knowing anything of the health of any of the relatives of said Charles Nichols; if so, state what you know upon the subject, giving fully the particulars concerning any disease which any of the near relatives of said Nichols may have been afflicted with, and, as near as you may be able, the date of such affliction?

Int. 5th. State fully whatever may be within your knowledge concerning any near relative or relatives of said Charles Nichols suffering from any pulmonary disease, the name or names of such relative or relatives of the said Charles Nichols, and the time and place, as accurately as you can recollect, when and where they suffered from such disease.

Int. 6th. State if you know of the death of any near relative or relatives of said Charles Nichols, and, as near as you can, the time of such death or deaths, and the names of the deceased; and state, if within your knowledge, the nature of the disease as causing death, and the relationship of the deceased to the said Charles Nichols, *and the relationship of deceased to said Nichols.*

Int. 7th. State fully anything and everything you may know concerning any pulmonary complaint with which any of the near relatives of said Charles Nichols may have been afflicted, stating the relationship. State whatever you may know of any of said near relatives of said Nichols having been afflicted with consumption, or if, within your knowledge,

30 *Writ to serve interrogatories to J. J. Gregory.—Issued December 23d, 1878.*

UNITED STATES OF AMERICA,
Eastern District of Texas:

In United States circuit court at Galveston.

MARY A. NICHOLS ET AL.
vs.
ALABAMA GOLD LIFE-INSURANCE COMPANY. } No. 1078.

The President of the United States to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to serve Mary A. Nichols et al., the plaintiffs in the above-entitled cause, or their attorneys of record, Messrs. Willie & Cleveland, with the accompanying certified copy of interrogatories propounded in said cause by the defendant to J. J. Gregory, of Fayette County, a witness for defendant; and you will also serve at the same time the notice by defendant to said plaintiffs attached to and contained in said copy of interrogatories.

Herein fail not, and due return of this writ make.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the eastern district of Texas, at Galveston, this 24th day of December, A. D. 1878.

[SEAL.]

C. DART,
Clerk U. S. Circuit Court, E. D. T., G.,
By JAMES T. SPANN, *Dept.*

31 *Marshal's return.*

Received this writ on the 23d day of December, 1878, and executed the same on the 26th day of December, 1878, by delivering to Willie, of the firm of Willie & Cleveland, in person, at Galveston, in my district, the accompanying copy of interrogatories and notice named in this writ, certified by the clerk of this court.

WM. J. PHILLIPS,
U. S. Marshal, Eastern District of Texas,
By W. T. CLAYTON, *Deputy.*

The foregoing writ endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company. Writ to serve interrogatories. Issued Dec'r 23, 1878. C. Dart, clerk, by James T. Spann, dept. Ret'd & filed Dec'r 26, '78. C. Dart, clerk, by James T. Spann, dept."

32 *Interrogatories to W. C. McGowan.—Filed December 23d, 1878.*

Circuit court of the United States, eastern district of Texas.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY. } No. 1078.

The plaintiffs in the above-entitled case, and Mess. Willie and Cleveland, of Galveston, Texas, will please take notice that five days after the service of a copy of the following interrogatories to McGowan, of Travis County, Texas, a witness for defendant in the above-entitled cause, we will apply for a commission to the clerk of the circuit court of the United States for the eastern district of Texas to take the answers of said W. C. McGowan to said interrogatories.

WAUL & WALKER,
Att'ys for Def't.

Int. 1st. What is your profession; how long have you practiced it, and where?

Int. 2nd. Were you acquainted with Charles Nichols during his lifetime, and were you acquainted with any of his near relatives; if so, where, and during what time?

Int. 3d. If you were acquainted with any of his near relatives, state their names and their relationship to him, said Charles Nichols, and state how many brothers and sisters of said Charles Nichols you knew, and where you knew them; for how long? Did you know his mother and father, or either of them; if so, at what time?

33 Int. 4th. Did you ever have any occasion or opportunity of knowing anything of the health of any of the relatives of said Charles Nichols; if so, state what you know upon the subject, giving fully the particulars concerning any disease which any of the near relatives of said Nichols may have been afflicted with, and, as near as you may be able, the date of such affliction?

Int. 5th. State fully whatever may be within your knowledge concerning any near relative or relatives of said Charles Nichols suffering from any pulmonary disease, the name or names of such relative or relatives of the said Charles Nichols, and the time and place, as accurately as you can recollect, when and where they suffered from such disease.

Int. 6th. State if you know of the death of any near relative or relatives of said Charles Nichols, and, as near as you can, the time of such death or deaths, and the names of the deceased; and state, if within your knowledge, the nature of the disease as causing death, and the relationship of the deceased to the said Charles Nichols, *and the relationship of deceased to said Nichols.*

Int. 7th. State fully anything and everything you may know concerning any pulmonary complaint with which any of the near relatives of said Charles Nichols may have been afflicted, stating the relationship. State whatever you may know of any of said near relatives of said Nichols having been afflicted with consumption, or if, within your knowledge,

34 any of such near relatives died of consumption, giving the relationship, and as well as you can recollect the time of such affliction or death.

WAUL & WALKER,
Att'ys for Def't.

The foregoing interrogatories endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. Ala. Gold Life-Ins. Co. Interrogatories to W. C. McGowan. Filed Dec'r 23, '78. C. Dart, clerk, by James T. Spann, dept."

Writ to serve interrogatories to W. C. McGowan.—Issued December 24th, 1878.

UNITED STATES OF AMERICA,
Eastern District of Texas:

In United States circuit court, at Galveston.

MARY A. NICHOLS ET AL.
vs.
ALA. GOLD LIFE-INS. CO. } No. 1078.

The President of the United States to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to serve Mary A. Nichols et al., plaintiffs in the above-entitled cause, or their attorneys of record, Messrs. Willie
35 & Cleveland, with the accompanying certified copy of interrogatories, propounded in said cause by the defendant to W. C. McGowan, a witness for defendant, and you will also serve at the same time the notice by defendant to said plaintiffs, attached to and contained in said copy of interrogatories.

Herein fail not, and due return of this writ make.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the eastern district of Texas, at Galveston, this 24th day of December, A. D. 1878.

[SEAL.]

C. DART,
Clerk U. S. Circuit Court, E. D. T., G.,
By JAMES T. SPANN, *Dept.*

Marshal's return.

Received this writ on the 24th day of December, 1878, and executed the same on the 26th day of December, 1878, by delivering to Willie, of the firm of Willie & Cleveland, in person, at Galveston, in my district, the accompanying copy of interrogatories and notice named in this writ, certified by the clerk of this court.

WM. J. PHILLIPS,
U. S. Marshal, Eastern District of Texas,
By W. T. CLAYTON, *Deputy.*

36 The foregoing writ endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. Alabama Gold Life-Insurance Company. Writ to serve interrogatories. Issued Dec. 24th, 1878. C. Dart, clerk, by James T. Spann, dept. Ret'd & filed Dec. 26, '78. C. Dart, clerk, by James T. Spann, dept."

X-interrogatories to J. J. Gregory.—Filed December 28th, 1878.

MARY A. NICHOLS
vs.
ALABAMA GOLD LIFE-INSURANCE COMPANY. } No. 1078.

Suit pending in U. S. circuit c't for E. dist. of Texas.

Cross-interrogatories to be propounded to J. J. Gregory, of Fayette Co., Tex., a witness for the defendant.

X-int. 1. This is a suit brought by Mrs. Mary A. Nichols as the surviving wife of Charles Nichols, in her own behalf and as guardian for her minor children, against the Alabama Gold Life-Insurance Company, to recover the amount of a policy of insurance, issued by the said com-
37 pany, on the life of said Charles Nichols, deceased, and which the said company has refused to pay, and is resisting in this suit. Now, if in answering any of the various questions propounded to you by the defendant you have stated anything upon hearsay, or upon information derived from others, please distinguish the same, and specify in answer to this what you have answered of your own knowledge, what upon information from others, and what as matters of opinion; declare fully and specify particularly.

WILLIE & CLEVELAND,
Att'ys for the Widow & Heirs of Chas. Nichols, Pl'ffs herein.

The foregoing X-interrogatories endorsed as follows, to wit: "1078, Mary A. Nichols et al. vs. Alabama Gold Life-Ins. Co. X-interrogatories to J. J. Gregory. Filed Dec'r 28, '78. C. Dart, clerk, by James T. Spann, dept.

X-interrogatories to W. C. McGowan.—Filed December 28th, 1878.

MARY A. NICHOLS
vs.
ALABAMA GOLD LIFE-INSURANCE COMPANY. } 1078.

38 Suit pending in the U. S. circuit court for E. dist. of Texas.

Cross-interrogatories to be propounded to W. C. McGowan, of Travis Co., Tex., witness for defendant.

X-int. 1. This is a suit brought by Mrs. Nichols, as the surviving wife of Charles Nichols, deceased, in her own behalf and for her minor children, against the Alabama Gold Life-Ins. Co., to recover the amount

of a policy of insurance, issued by the said company, on the life of said Charles Nichols, dec'd, and which the said company has refused to pay, and is resisting in this suit. Now, if in answering any of the defendant's various direct interrogatories you have stated anything upon hearsay, or upon information derived from others, then please distinguish the same, and specify particularly in answer to this X-interrogatory what part or parts of your answers you have made as of your own knowledge, what upon information from others, and what as matters of opinion; declare fully.

WILLIE & CLEVELAND,
Att'ys for Pl'ffs Mrs. Mary A. Nichols and Children.

The foregoing X-interrogatories endorsed as follows, to wit: "1078, Mary A. Nichols et al. vs. Alabama Gold Life-Ins. Co. X-interrogatories to Dr. McGowan. Filed Dec'r 28, 1878. C. Dart, clerk, by James T. Spann, dept.

39 *Interrogatories to Charles Taylor et al.—Filed January 2d*, 1879.

MARY A. NICHOLS ET AL.
vs.
ALA. GOLD LIFE-INSURANCE COMPANY. } No. 1078.

Suit pending in the circuit court of the United States, eastern district of Texas.

The plaintiffs in the above numbered and styled cause, or their attorneys of record, Mess. Willie & Cleveland, will take notice that five days after the service of a copy of the following interrogatories we will apply for a commission to the clerk of the circuit court of the United States, eastern district of Texas, to take the answers of Charles Taylor, Maria L. Rollings, William McKee, and Percival M. Bush, residents of Marshall County, State of Alabama, witnesses for the defendant in said cause.

WAUL & WALKER,
Att'ys for Def't.

Interrogatories to be propounded to Charles Taylor, Maria L. Rollings, William McKee, and Percival M. Bush.

Int. 1st. Where do you reside, and how long have you resided there?

Int. 2d. Were you acquainted with Charles Nichols during his life-time; and were you acquainted with any of his family? If so, where, and during what time?

Int. 3d. If you were acquainted with any of his family, state their
40 names and relationship to said Charles Nichols. State how many brothers and sisters of said Nichols you knew, and their names.

Int. 4th. Did you ever have occasion to know anything of the health of any of the near relatives of said Charles Nichols? If so, state what you know of the health of such relatives, whether robust or delicate.

Int. 5th. State whatever you may know of any of the near relatives of Charles Nichols suffering from any pulmonary disease; the name of any such relative, if within your knowledge, and the relationship of such person to said Chas. Nichols.

Int. 6th. State if you know anything of any of the near relatives of said Nichols having had the consumption; if so, state when, the name of such relative or relatives, and the relationship to said Chas. Nichols.

Int. 7th. State if you know of the death of any near relative or relatives of said Nichols; if yea, state as well as you remember the time of such death or deaths, the names of the deceased, and relationship to Chas. Nichols, and the disease of which such person or persons died.

Int. 8th. If you have answered that any brother of the said Nichols is dead, state his age at the time of his death; and, further, state anything you may know of the health of any member of the said family, as to being generally healthy or otherwise, and whether long-lived or otherwise.

WAUL & WALKER,
Att'ys for Def'ts.

41 The foregoing interrogatories endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. Ala. Gold Life-Ins. Co. Interrogatories to Charles Taylor, Maria L. Rollings, William McKee, and Percival M. Bush. Filed Jan'y 2, 1879. C. Dart, clerk, by James T. Spann, dept."

Writ to serve interrogatories to Chas. Taylor et al.—Issued January 3d, 1879.

UNITED STATES OF AMERICA,
Eastern District of Texas:

In United States circuit court at Galveston.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY. } No. 1078.

The President of the United States to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to serve Mary A. Nichols & others, plaintiffs in the above-entitled cause, or their attorneys of record, Messrs. Willie & Cleveland, with the accompanying certified copy of interrogatories propounded in said cause by the defendant to Charles Taylor, Maria
42 L. Rollings, William McKee, and Percival M. Bush, of Marshal County, Alabama, and you will also serve at the same time the notice by defendant to said plaintiff attached to and contained in said copy of interrogatories.

Herein fail not, and due return of this writ make.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the eastern district of Texas, at Galveston, this 3d day of January, A. D. 1879.

[SEAL.]

C. DART,
Clerk U. S. Circuit Court, E. D. T., G.,
By JAMES T. SPANN, *Dept.*

Marshal's return.

Received this writ on the 3d day of January, 1879, and executed the same on the 3d day of January, 1879, by delivering to C. L. Cleveland, of the firm of Willie & Cleveland, in person, at Galveston, in my district, the accompanying copy of interrogatories and notice named in this writ, certified by the clerk of this court.

WM. J. PHILLIPS,
U. S. Marshal, Eastern District of Texas,
By R. DEMPSEY, *Deputy.*

The foregoing writ endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company. Writ to serve interrogatories. Issued Jan'y 3d, 1879. C. Dart, clerk, by James T. Spann, dept. Returned and filed 3d day of Jan'y, 1879. C. Dart, clerk, by James T. Spann, dept."

43 *X-interrogatories to Chas. Taylor et al., Maria L. Rollings, William McKee, & Percival M. Bush.—Filed January 4th, 1879.*

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY. } 1078.

Suit pending in the U. S. circuit court for the eastern district of Texas.

Cross-interrogatories to be propounded to Charles Taylor, Maria L. Rollings, William McKee, and Percival M. Bush, of Marshall County, Alabama, witnesses for defendant in the above-entitled case.

X-int. 1st. This is a suit brought by Mrs. Mary A. Nichols, in her own behalf, as widow of Charles Nichols, and in behalf of her minor children, to recover the amount of five thousand dollars on a policy of insurance, issued by the Alabama Gold Life-Insurance Company, on the life of Charles Nichols, now deceased. Please state whether you or either of you have any interest in the subject-matter of this suit.

X-int. 2. What is your occupation, trade, or profession, and your age?

X-int. 3. If you say you or either of you are physicians, then state how long you have practiced that profession.

X-int. 4. If you say that any of the near relations of Charles Nichols ever died, then state how you know the fact. If you say of any particular disease, then please state how you know what the disease was which caused such death; and whether you are skilled in determining the nature and symptoms of the various diseases "that flesh is heir to," or can
44 you say of your own knowledge of what specific disease such relative of Charles Nichols died.

X-int. 5. Do you know, of your own knowledge, of what particular disease the person or persons of whom you are testifying died?

X-int. 6. If you say that any relative of Charles Nichols died of any particular disease, then say how you know it was that particular disease.

X-int. 7. How long was such person or persons sick in their last illness?

How often did you see such person or persons during their last illness? Did you wait upon or attend such person or persons in their last sickness?

X-int. 8. Are you able, of your own knowledge, to distinguish and detect in a man or woman any of the following diseases: pleurisy, pneumonio, bronchitis, laryngities, phthisis, pulmonatis, asthma, pericarditas, congestion of the lungs, congestion of the liver, consumption, rheumatism of the heart? If you say you can, please state the particular and peculiar symptoms of each disease and in what respect it differs, or is to be distinguished, from the other diseases mentioned? and give the symptoms that are peculiar to each, if you know.

X-int. 9. Can you state, of your own knowledge, that any relative of Charles Nichols died of either of the diseases above mentioned? If you say you can then say how you know it, and what the particular disease; and your reasons at length for calling it so.

45 X-int. 10. Please state anything you may know in respect to this suit, which may be of benefit to Mrs. Mary A. Nichols and her minor children who are the plaintiffs in this suit.

WILLIE & CLEVELAND,
Att'ys for Pl'ffs.

The foregoing X-interrogatories endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. Alabama Gold Life-Ins. Co. X-interrogatories. Filed Jan'y 4, '79. C. Dart, clerk, by James T. Spann, dep't"

Deposition of W. C. McGowan.—Filed January 4th, 1879.

Circuit court of the United States, eastern district of Texas.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY. } No. 1078.

The plaintiffs in the above-entitled cause and Mess. Willie & Cleveland, of Galveston, Texas, will please take notice that five days after the service of a copy of the following interrogatories to McGowan, of Travis County, Texas, a witness for defendant in the above-entitled cause, we will

46 apply for a commission to the clerk of the circuit court of the United States for the eastern district of Texas to take the answers of said W. C. McGowan to said interrogatories.

WAUL & WALKER,
Att'ys for Def't.

Int. 1st. What is your profession, how long have you practiced it, and where?

Int. 2d. Were you acquainted with Charles Nichols during his lifetime, and were acquainted with any of his near relative; if so, where and during what time?

Int. 3d. If you were acquainted with any of his near relatives, state their names and their relationship, to him, said Charles Nichols, and state how many brothers and sisters of said Charles Nichols you knew, and where

you knew them, for how long did you know his mother and father or either of them. If so, at what time?

Int. 4th. Did you ever have any occasion or opportunity of knowing anything of the health of any of the relatives of said Charles Nichols. If so, state what you know upon the subject, giving fully the particulars concerning any disease which any of the near relatives of said Nichols may have been afflicted with, and, as near as you may be able, the date of such affliction?

Int. 5th. State fully whatever may be within your knowledge concerning any near relative or relatives of said Charles Nichols suf-
47 fering from any pulmonary disease, the name or names of such relative or relatives of the said Charles Nichols, and the time and place, as accurately as you can recollect, when and where they suffered from such disease.

Int. 6th. State if you know of the death of any near relative or relatives of said Charles Nichols, and as near as you can the time of such death or deaths, and the names of the deceased, and state, if within your knowledge, the nature of the disease so causing death, and the relationship of the deceased to the said Charles Nichols; *and the relationship of deceased to said Nichols?*

Int. 7th. State fully anything and everything you may know concerning any pulmonary complaint with which any of the near relatives of said Charles Nichols may have been afflicted, stating the relationship; state whatever you may know of any of said near relatives of said Nichols having been afflicted with consumption, or if, within your knowledge, any of such near relatives died of consumption, giving the relationship, and, as well as you can recollect, the time of such affliction or death.

WAUL & WALKER,
Att'ys for Def't.

The foregoing interrogatories endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. Ala. Gold Life-Ins. Co. Interrogatories to W. C. McGowan. Filed Dec. 23, '78. C. Dart, clerk, by James T. Spann, dept."

48 MARY A. NICHOLS
vs.
ALABAMA GOLD LIFE-INSURANCE COMPANY. } 1078.

Suit pending in the U. S. circuit c't for E. dist. of Texas.

Cross-interrogatories to be propounded W. C. McGowan, of Travis Co., Texas, a witness for defendant.

X-int. 1. This is a suit brought by Mrs. Nichols as the surviving wife of Charles Nichols, deceased, in her own behalf and for her minor children, against the Alabama Gold Life-Insurance Company, to recover the amount of a policy of insurance, issued by the said company, on the life of said Charles Nichols, deceased, and which the said company has refused to pay and is resisting in this suit. Now, if in answering any of the defendant's various direct interrogatories you have stated anything upon hearsay, or upon information derived from others, then please distinguish the same, and specify particularly in answer to this X-interrogatory what part or parts

of your answers you have made as of your own knowledge, what upon information from others, and what as matter of opinion; declare fully.

WILLIE & CLEVELAND,
Att'ys for Plaintiff Mrs. Mary A. Nichols and Children.

The foregoing X-int's indorsed thus: "Filed Dec'r 28, 1878. C. Dart, clerk, by James T. Spann, dept."

49 I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, in the fifth circuit and district aforesaid, do hereby certify the foregoing to be a true and correct copy of the direct and cross-interrogatories propounded to W. C. McGowan, a witness on behalf of defendant, residing in Travis County, Texas, in cause No. 1078, on the law docket of said court, entitled "Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company," as the same now appears on file in my office.

To certify which, witness my hand and the seal of said court, at Galveston, in said district, this the 30th day of December, A. D. 1878.

[SEAL.] C. DART,
Clerk U. S. Circuit Court, E. D. T., at Galveston,
By JAMES T. SPANN, *Deputy.*

The foregoing copy of direct & X-interrogatories endorsed thus: "No. 1078. C. L. Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company. Copy of direct & cross-interrogatories propounded to W. C. McGowan, of Travis County, Texas."

50 In U. S. circuit court at Galveston.

UNITED STATES OF AMERICA,
Eastern District of Texas:

The President of the United States of America to any commissioner of the circuit court appointed by a circuit court of the United States, or notary public, or other officer authorized to take depositions to be used in courts of the United States, residing in Travis County, Texas, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you, or either of you, and by these presents do give unto you full power and authority diligently to examine W. C. McGowan, a resident of the county of Travis, State of Texas, upon certain interrogatories propounded to him in a cause wherein Mary A. Nichols et al. are plaintiffs and the Alabama Gold Life-Insurance Company is defendant, now pending in the circuit court of the United States for the eastern district of Texas, in the fifth circuit, and therefore we command that you, at certain days and places to be appointed by you for that purpose, cause the said witness to come before you, and then and there examine him upon the said interrogatories and any cross-interrogatories (copies whereof are hereto annexed), on his corporal oath first taken before you upon the Holy Evangelists or in such other solemn manner as is and may be authorized by law; and that you do take the answers of the witness to such interrogatories and reduce the same to writing, which shall be signed and sworn to by the said witness; and you shall certify under your hand and seal that the same was signed and sworn to by the said witness before you, and

shall seal them up in an envelope with the interrogatories and this commission, with your name across the seal, and indorse on the envelope the names of the parties to the suit and the name of the witness, and direct the package to the "Clerk of the circuit court of the United States for the eastern district of Texas, Galveston, Texas;" if sent by mail, the postmaster or his deputy mailing the same shall indorse thereon that he received them from the hands of the officer before whom they were taken.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, and the seal of the said circuit court of the United States for the eastern district of Texas, at Galveston, in said district, this 31st day of December, A. D. 1878, and of American Independence the 103d year.

C. DART,
Clerk U. S. Circuit Court, Eastern District of Texas, at Galveston,
By JAMES T. SPANN, *Dept.*

51 The foregoing commission endorsed as follows, to wit: "No. 1078. C. L. In U. S. circuit court, eastern district of Texas. Mary Nichols et al. vs. The Alabama Gold Life-Ins. Company. Commission. Issued 31st day of Dec'r, A. D. 1878. C. Dart, clerk, by James T. Spann, dept."

In circuit court of the United States for the eastern district of Texas.

MARY NICHOLS ET ALS.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY. } No. 1078.

Answers of W. C. McGOWAN, a resident citizen of Travis County, Tex., to interrogatories propounded in the above-entitled cause, taken before me, Z. T. Fulmore, a notary public for said county & State, in accordance with the requirements of the commission hereto attached.

Being duly sworn the witness answers and says to interrogatory first: 1. Physician; have been practicing nearly thirty years; first in Colorado County, Texas, then in Fayette County, Texas, then in Houston, Texas, and the remainder of the time in Austin, Texas.

To 2d interrogatory he answers: 2. I was acquainted with Charles Nichols during his life-time; I knew his brother, Ed. Nichols,
52 and his mother and two sisters, & I think there was a younger brother; I knew them in La Grange, Fayette Co., Texas; I first knew them in 1861 or 1862, or about that time, and from that time up to 1865.

To 3d interrogatory he answers: 3. I am not positive as to the given names of the sisters of Nichols, but could tell by reference to my books. I knew two of his brothers and two sisters, and have an indistinct recollection that there was a third brother, younger than the others. I knew them in La Grange, Texas, during the time mentioned above. I knew his mother, but not his father. I knew her during the time before mentioned.

To 4th interrogatory he answers: 4. I was their family physician a good part of the time between 1861 and 1865; the first time I was called to see any member of the family was, in consultation with other physicians, to see

the younger daughter, & took charge of the case; she was then suffering suppression of the menses, which resulted in a cough, and finally in her death. This was some time in 1861.

To the 5th interrogatory he answers: 5. I have stated in my answer to the preceding interrogatory all I know relative to the suffering of any relative of Charles Nichols with pulmonary disease, and I considered this pulmonary disease the result of suffering from suppression of the menses. I also attended the mother of Charles Nichols in her last illness, and my recollection is that she did not die from any pulmonary disease.
53 These were the only two important cases I ever treated in the family. I never treated any of the others for lung disease. I treated the old lady near Rutersville, in Fayette Co., in February & March, in 1864, and the daughter some time in the year 1861.

To 6th interrogatory he answers: 6. I have stated this fully in my answer to the preceding interrogatory. Mrs. Nichols was the mother and Miss Nichols was the sister of Charles Nichols.

To seventh interrogatory he answers: 7. I have stated this fully in my answer to preceding interrogatories.

Answer to cross-interrogatories.

To X-interrogatory first he answers: X 1. I have stated nothing from hearsay; my answers to the direct interrogatories fully disclose what my opinions are in contradistinction to what my actual knowledge is. Miss Nichols died of what we term rapid consumption, but it was the result of the suppression of the menses, as I have before stated.

(Signed) W. C. McGOWAN, *M. D.*

STATE OF TEXAS, *Travis County:*

I, Z. T. Fulmore, a notary public for the county and State aforesaid, do hereby certify that the foregoing answers of the above-named witness, W. C. McGowan, M. D., were made before me by the said witness, and were reduced to writing by me, and were sworn to and subscribed be-
54 fore me by the said witness.

To certify which I hereto sign my name & affix my official seal, at office, in Austin, Texas, this the 3d day of January, A. D. 1879.

[SEAL.] Z. T. FULMORE,
Notary Public, Travis County, Texas.

Notarial fees, certf., & m'ge, 4.00. Paid by Waul & Walker.

The foregoing deposition of W. C. McGowan, M. D., endorsed as follows, to wit: Publication made by order of court, at request of C. L. Cleveland, of counsel for plaintiff, Jan'y 4, '79. C. Dart, clerk, by James T. Spann, dep't. Filed Jan'y 4, '79. C. Dart, clerk, by James T. Spann, dep't.

The envelope containing the foregoing deposition endorsed as follows, to wit: No. 1078. Mary A. Nichols et al., plaintiffs, vs. The Alabama Gold Life-Insurance Company, defendant. Suit pending in circuit court of the United States for the eastern district of Texas. Deposition of W.
55 C. McGowan, M. D., in answer to interrogatories. To C. Dart,

esq., clerk of the circuit court of the United States for the eastern district of Texas, Galveston, Texas. Received this package from the hands of Z. T. Fulmore, the officer before whom the enclosed depositions were taken, to be forwarded as directed by due course of mail, this the 3d day of January, A. D. 1878. H. B. Kinney, postmaster at Austin, Texas. Rec'd from the post-office at Galveston, Texas, Jan'y 4, '79. C. Dart, clerk, by James T. Spann, dep't. Filed Jan'y 4, '79. C. Dart, clerk, by James T. Spann, dep't. Publication made by order of court, at request of C. L. Cleveland, of counsel for plaintiffs, Jan'y 4, '79. C. Dart, clerk, by James T. Spann, dep't. (Across the seal thus:) Z. T. Fulmore, notary public, Travis Co., Texas. Z. T. Fulmore, notary public, Travis Co., Texas. Z. T. Fulmore, notary public, Travis Co., Texas.

56 *Amended answer.—Filed January 27th*, 1879.

United States circuit court, eastern district of Texas, ss.

MARY A. NICHOLS ET AL.
vs. } 1078.
THE ALA. GOLD LIFE-INS. CO.

I. And by leave of the court first had and obtained the defendants, further answering, say that the policy of insurance in the petition mentioned was made by the defendants, in consideration of the representations made to the Texas Mutual Insurance Company of Galveston, by the said Charles Nichols, in his application for insurance on his life to said company, dated the 23d day of April, 1873, and upon the condition that the statements therein made should form the basis for the contract of insurance, and also that any untrue or fraudulent answers or any suppression of facts with regard to the person's health or habits shall and will render the policy null and void, and forfeit all payment made thereon; and the defendants say that one of the answers of the said Charles Nichols to one of the questions in said application, being the answer to the 2d branch or division of question 6th: "Has any application for insurance ever been declined, and, if so, for what reasons?" (meaning thereby had the application of the said Nichols for insurance on his life in any other company been declined); to which question the said Nichols answered: B. No; whereas in truth and
57 in fact the said Charles Nichols well knew at the time he made said answer he had before that time, to wit, on the 11th day of May, 1870, made an application to the Knickerbocker Life-Insurance Company for an insurance upon his life, and the same had been declined by the said company, and all of which was unknown to these defendants. Wherefore the defendants say that the said policy in said petition mentioned was and is void in law.

II. And, further answering, the defendants say that another of said answers of the said Nichols to the questions in the said application to the Tex. Mut. Ins. Co., being the answer of said Nichols to question 15, viz: "How many brothers have you had? How many are living, and their ages? State of health? How many are dead, and age at death? Cause of death?" To which the said Nichols answered that he had had three brothers; that there was one living, aged twenty-two yea's; that his state of health was good; that he had two brothers dead, aged thirty-seven (37)

and thirty-eight (38), respectively, at the time of their death, and that he did not know the cause of their death; when the truth and the fact was that the said brothers were of the respective ages of thirty and thirty-three years, and that one or both of said brothers died of consumption—all of which was well known to the said Charles Nichols at the time he made his answer to said question, and the same was unknown to these defend-
58 ants. Wherefore they say the said policy was and is null & void.

III. And, further answering, defendants say that in another of the answers of the said Nichols to one of the questions in said application to the Tex. Mutual Insurance Company, being the answer to the 2d branch of question 15, to wit: "How many sisters?" (meaning how many sisters had the said Nichols). "How many are living, and their ages? State of health? How many dead, and age at death? Cause of death?" To which the said Chas. Nichols answered that he had had four (4) sisters; that one (1) was living, aged thirty (30) years; that her state of health was good; that three of his sisters were dead, one (1) having died in child-birth, aged twenty-five (25) years; another (1) of general debility, aged twenty-eight (28); and the other (1) of pneumonia, aged twenty-five (25) years; when in truth and in fact two of the said sisters died of consumption—all of which was well known to said Chas. Nichols when he made the said answers, and which was unknown to these defendants. Wherefore they say the said policy was and is null and void. Wherefore, &c.

IV. And, further answering, defendants say that in answer to another question in said application of the said Nichols to the said Tex. Mut. Ins. Company, being the answer to question 16th in said application, to wit: "Have your parents or brothers or sisters been afflicted with insanity, or with pulmonary or scrofulous or any other constitutional
59 disease hereditary in its character?" To which question the said Charles Nichols answered "No;" whereas in truth and in fact the parents and the brothers and the sisters of the said Nichols were all afflicted with pulmonary consumption, and that the father and the mother and one or two brothers and two sisters died of pulmonary consumption, and that the said disease was constitutional in his said brothers and sisters—all of which was well known to said Nicholls at the time he made said answers, and was unknown to these defendants. Wherefore they say the said policy was & is null & void.

V. And, further answering, defendants say that the policy in said petition mentioned was obtained from the defendants by the fraud, false statements, misrepresentations, and suppression of facts of the said Charles Nichols, to wit, as to the diseases with which his father & mother, brothers & sisters had been afflicted, and by the fraudulent concealment & withholding from the defendants by the said Nichols of certain material information in regard to himself and his family and then affecting the risk, and which before and at the time of issuing the policy was known to said Nichols, and with which the defendants ought then and there to have been informed, to wit, that the family of said Nichols and himself were constitutionally predisposed to pulmonary consumption; that the father and mother of said Nichols had died of pulmonary consumption, and
60 that two brothers and two sisters of the said Nichols had before that time died with pulmonary consumption; and that he, the said Nichols, had applied for insurance upon his life in the Knickerbocker Life-

Insurance Company on the 11th of May, 1870, and that his application was declined by said company on account of the representations then truly made by the said Nichols, to wit, that two sisters and one brother had before that time died of consumption. Wherefore defendants say that the said policy is null and void.

VI. And, further answering, defendants say that the policy in petition was issued upon condition and under the special agreement between the said Chas. Nichols and the defendants that in the event that any claim arising on said policy was contested by these defendants for any cause whatever, then the application for the said Texas Mutual Life-Insurance Company's policy and the said Texas Mutual Life-Insurance Company's policy, as within described, and for which the within policy is substituted as stated, shall be jointly and severally taken and accepted as the real contract between the company and the insured in accordance herewith; and the defendants say that by the said policy of the Texas Mut. Life-Ins. Co., it is expressly stipulated "that the declarations and statements made
in the application for this policy, or otherwise submitted in writing
61 to this company, on the faith of which declarations and statements
this policy is issued, are warranted by the assured & by the holder hereof to be in all respects true, and without the suppression of any relating to the health or circumstances either of the person whose life is hereby
, or of his family, affecting the interests of this company, and that the violation of this condition in any respect renders this policy null and void."

And the defendants aver that the said Nichols, in his said application to the said Texas Mutual Insurance Company, made the following statements, to wit: That he, the said Nichols, had never before the time of his said application made any other application to any other person or company which had been declined, and which statement, by the terms of said policy, was and is warranted by the said Nichols and the plaintiffs to be true, while the fact and the truth is that the said Nichols had before that time, to wit, on the 11th of May, 1870, made a' application for insurance in the Knickerbocker Life-Insurance Company, and which had been by said company declined, which fact was suppressed by the said Nichols, although the same and the statements therein contained were well known to said Nichols, and affected the interests of the company; and therefore the said policy issued by these defendants was and is null and void.

VII. And, further answering, defendants say that the further
62 statements in said application contained and made by the said
Nichols, to wit, that he had two brothers dead, and that he did not know the cause of their death, which statement was warranted to be true by said Nichols, and the truth and the fact is that one or both of said brothers died of consumption, which was well known at the time of said statement by the said Nichols; and the suppression of the said facts relating to the health of the said Nichols family affected the interests of the said Tex. Mut. Ins. Co. and these defendants; and therefore said policy issued issued by said defendants is and was null and void.

VIII. And the defendants further say that the said Nichols, in his application to the Texas Mutual Insurance Company, made the statement that he had three sisters dead; that one died of child-birth, one died of general debility, and one died of pneumonia, and which statement, by the

terms of the policy of the Tex. Mut. Ins. Co., was and is warranted by said Nichols and plaintiffs to be true; whereas the truth and the facts are that two of said sisters died of pulmonary consumption; and the suppression of said facts relating to the health of the family of said Nichols affected the interests of this company, as well as the interests of the Tex. Mut. Ins. Co.; and the policy therefore issued by these defendants was and is null and void.

VIIII IX. And defendants further say that the said Nichols, in his statements in his application to the Tex. Mut. Ins. Co., made the
63 following, to wit: That his parents, nor his brothers, nor his sisters; nor either of them, had been afflicted with pulmonary or scrofulous or other constitutional disease hereditary in *his* character, which statement, by the terms of the policy, was and is warranted to be true by the said Nichols and the said plaintiffs; and the truth and the facts are that the brothers and sisters of the said Nichols had been afflicted with pulmonary consumption, a disease constitutional and hereditary in its character; and the suppression of the said facts relating as they do to the health of the family of the said Nichols, and affecting the interest of these defendants: and the policy therefore issued by these defendants was and is null and void.

X. And defendants further say that the policy issued by them was issued upon the express agreement and understanding of the assured, the said Nichols, "that if the declarations, or any part thereof, made by or for the said insured in the application for the Texas Mutual Life-Insurance Company's policy (for which defendant's policy was substituted), and bearing date the 23d of April, 1873, and upon the faith of which this policy is made, shall be found in any respect untrue, then, and in every such case, this policy shall be null and void;" and these defendants aver that the said Nichols in said application represented that "no ap-
64 plication for insurance made for him upon his life had ever been declined," when the fact and the truth is, anterior to the time of said application, to wit, on the 11th of May, 1870, the said Nichols had made application for insurance upon his life to the Knickerbocker Life-Insurance Company, and the same had been declined by said company; and defendants aver that said Nichols further stated in said application to Tex. Mut. Ins. Co. that neither of his parents nor brothers nor sisters were afflicted with pulmonary or any other constitutional disease hereditary in its character, when the truth was that before that time two of his sisters and one his brothers had died of pulmonary consumption, for which said several reasons the said policy was and is null and void.

And defendants say that they are ready to verify & prove all their allegations in said answers contained.

WAUL & WALKER,
Att'ys for Def'ts.

The foregoing amended answer endorsed as follows, to wit: C. L. 1078. U. S. c. court. Mary A. Nichols et al. vs. The Ala. Gold L. Ins. Co. Amended answer. Filed Jan'y 27th, 1879. C. Dart, clerk.

65 *Direct and X interrogatories to J. A. Nichols.—Filed February 1st, 1879.*

Circuit court of the United States, eastern district of Texas.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY.

Interrogatories to be propounded to J. A. Nichols, a resident of New York City, State of New York, a witness for defendant in the above-entitled cause.

Int. 1st. What is your occupation and official position, and where do you reside?

Int. 2d. Do you know of any application for insurance upon the life of Charles Nichols, of Galveston, Texas, having been made by him in the month of May, 1870, to any life-insurance company? If so, state the date, if you recollect it, and the name of the insurance company to which such application, if any, was made.

Int. 3d. Do you know what action was taken upon the said application of said Chas. Nichols? If so, state specifically what was such action and the reasons therefor.

Int. 4th. State anything further you may know concerning the matters heretofore interrogated upon which may benefit either the plaintiff or defendant.

WAUL & WALKER,
Att'ys for Def't.

66 Cross-interrogatories to be propounded to said J. A. Nichols.

X-int. 1. Did you receive the said application spoken of directly and personally from Charles Nichols, or from some one else; and, if so, from whom?

X-int. 2. How was said application transmitted to you? How did you receive it, and from whom did you receive it?

X-int. 3. Have you the application of which you have spoken? Is it in writing, or was it in writing? Attach the same to your answer if in your custody or control.

X-int. 3. If you say said application was refused, then state to whom and by what means you communicated said refusal, if any there was.

WILLIE & CLEVELAND,
Att'ys for Pl'ffs.

We hereby waive notice and service of copy of within interrogatories and agree that the answers to within interrogatories and cross-interrogatories may be taken before any officer authorized to take depositions under the laws of the United States.

WILLIE & CLEVELAND,
Att'ys for Pl'ffs.

The foregoing direct & X int's endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. Alabama Gold Life-Insurance Company. Direct and X interrogatories to J. A. Nichols. Filed Feb'y 1, 1879. C. Dart, clerk, by James T. Spann, dept."

67 *Deposition of W. S. Coleman.—Filed February 7th*, 1879.

Suit pending in circuit court of the United States, eastern dist. Texas.

MARY A. NICHOLS
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY.

Interrogatories to be propounded to W. S. Coleman, at Austin, Travis Co., Texas, a witness for defendant.

Int'y 1st. What was your occupation during the month of May, 1870, and where were you doing business at that time?

Int. 2d. Were you acquainted with Charles Nichols, deceased, during his life-time? If so, where did you know him?

Int. 3d. If you have answered, in response to 1st interrogatory, that you were the agent of the Knickerbocker Life-Insurance Company at the time indicated, please state if you know anything of Charles Nichols having made any application to said company for life-insurance; and if so, state the circumstances of such application.

Int. 4th. If you have answered that said Charles Nichols made application to said company for insurance upon his life, state the date of said application; state, if within your knowledge, if such application was in writing; and if the said application be in your possession or control, identify the same by writing your name thereon, and attach the same to your answer.

68 Int. 5th. If you have attached an application for insurance upon the life of Charles Nichols to the Knickerbocker Life-Insurance Company to your answers, state whose signature as applicant appears to the same, and how you know it is his signature. By whom is the said application witnessed?

Int. 6th. State what was done with the said application by the said Knickerbocker Life-Insurance Company; was the risk accepted or rejected?

Int. 7th. State if the questions in said application were propounded to said Charles Nichols. If so, by whom, and by whom were they answered? State if the said Charles Nichols was informed of the acceptance or rejection of the said application; and by whom was such information given?

WAUL & WALKER,
Att'ys for Def't.

Cross-interrogatories to be propounded to the said W. S. Coleman.

1 X. If you say that the signature of Charles Nichols to said application is genuine, then state in whose handwriting is the remainder of the application, whose writing occurs therein, and particularly the

filling in of what purports to be answers to various questions therein. Was not said application signed in blank?

2 X. If you say that Charles Nichols was ever informed of acceptance or rejection of said application, then state when and where, and who was present at the time.

WILLIE & CLEVELAND,
Att'ys for Pl'ffs.

69 We hereby waive notice, service of copy of interrogatories, and issuance of commission, and agree that the within depositions may be taken before any officer authorized to take depositions under the laws of the United States.

WILLIE & CLEVELAND,
Att'ys for Pl'ff.

MARY A. NICHOLS
vs.
THE ALABAMA GOLD LIFE-INS. CO.

Suit in circuit court United States, eastern district of Texas.

Answers of W. S. Coleman, temporarily residing in Travis County, Texas, to interrogatories propounded in the above-entitled cause, taken before me, Z. T. Fulmore, a notary public for Travis County, Texas, in accordance with law, except in so far as its requirements may be waived by a written agreement signed by the respective att'ys of record accompanying said interrogatories.

Being duly sworn, the witness, W. S. COLEMAN, answers and says to interrogatory first:

1. My occupation during the month of May, 1870, I was agent for the Knickerbocker Life-Insurance Company of New York for the State of Texas, doing business in Galveston, Texas.

To 2d interrogatory he answers: 2. I knew a person known to me as Charles Nichols, in Galveston.

70 To 3d interrogatory he answers: 3. I have some recollection of his having made an application, but cannot specifically recall the circumstances, as a large number of persons made similar applications through me and subagents, and I remember nothing to make me particularly recall this case.

To 4th interrogatory he answers: 4. The date of the application is 11th day of May, 1870, as I see by the date of the application hereto attached. The application was in writing and printed, and is hereto attached, with my name, written by me, in it, and is marked "Exhibit A."

To 5th interrogatory he answers: 5. The name of Chas. Nichols appears as an applicant, & I verily believe that is his signature, though I cannot say positively now that I saw him sign it. I think it is his signature, because I made a general rule never to attach my name as a witness unless I saw the applicant sign in person, or to me in person he acknowledged his signature, and I do say that to the best of my knowledge and belief it is his signature, though, as stated, I cannot specifically recall the

circumstance of having seen him sign it. The application was witnessed by me; my genuine signature as agent appears as witness.

To 6th interrogatory he answers: 6. I cannot recall from recol-
71 lection any action of the company upon it, though it appears to have been rejected, as appears from the application itself.

To 7th interrogatory he answers: 7. I do not know whether the questions were propounded to him or not, nor do I know by whom they were answered; all I can say as to whether he was informed of the rejection or not, I don't know whether he was informed of its rejection or not, but I frequently did not inform applicants whose applications were rejected of such fact, because I had no further pecuniary interest in it, and would frequently not see them after the rejection. John Howard, whose name appears as an intimate friend of the applicant, was sub-agent under me, and frequently requested me to fill up applications for insurance from memoranda said to have been taken from alleged applicants, and after the blank application had been filled he would go out into the city of Galveston, and upon return to my office would frequently return with applicants, which applicants in my presence signed the applications; therefore I cannot say whether Nichols did as a matter of fact actually hear the printed questions and the written answers read; I only know that he signed the application and admitted his signature to it for the purposes therein mentioned.

Answers to cross-interrogatories.

To X-interrogatory 1st he answers: X. 1. The remainder of the
72 application is in my handwriting. As to the genuineness of the signature of Charles Nichols, I have answered as fully as I can in my answers to direct interrogatories. Upon the face of the application there are but two handwritings, all of which is mine except the signature of Chas. Nichols; I have no recollection that I ever took or allowed a signature to an application in blank; if so taken, it was afterwards read over to the applicant and by him approved before being forwarded to the company. To the best of my knowledge and belief it was not signed in blank; I have no reference to any handwriting except that on the inside of the application where the signature of Charles Nichols appears.

To 2d X-interrogatory he answers: X. 2. I have no recollection that he was ever so informed; do not know whether he was or not.

W. S. COLEMAN.

STATE OF TEXAS,
Travis County:

I, Z. T. Fulmore, notary a public for the county and State aforesaid, duly commissioned and qualified, do hereby certify that the foregoing answers of the above-named witness, W. S. Coleman were made before me by said witness, reduced to writing by me, & were sworn to and subscribed before me by said witness.

In testimony whereof I hereto sign my name and affix my offi-
73 cial seal, at office in Austin, Texas, this the 5th day of February, A. D. 1879.

[SEAL.]

Z. T. FULMORE,
Notary Public, Travis County, Texas.

Notarial fees: Dep't'ns' 3.00; cert., .50—total $3.50. Paid by def'ts.
Z. T. FULMORE, *Notary Public.*

The foregoing "deposition," endorsed as follows, to wit: "Filed Feb'y 8th, 1879. C. Dart, clerk, by Geo. C. Rives, dep't."

The envelope containing the foregoing deposition of W. S. Coleman, endorsed as follows, to wit: "Title of cause, Mary A. Nichols, plaintiffs, vs. Alabama Gold Life-Insurance Company, defendant. No. 1078. Suit pending in circuit court of the United States for the eastern district of Texas. Depositions of W. S. Coleman, Travis County, in answer to interrogatories. To C. Dart, clerk of the circuit court of the United States
74 for the eastern district of Texas, Galveston, Texas. Received this package from the hands of Z. T. Fulmore, the officer before whom the enclosed depositions were taken, to be forwarded as directed by due course of mail, this the 5th day of February, A. D. 1879. H. B. Kinney, postmaster at Austin, Texas, per Brennan. Received from the post-office at Galveston, Texas, Feb'y 7, 1879. C. Dart, clerk, by James T. Spann, deputy. Filed February 7, 1879. C. Dart, clerk, by James T. Spann, dep't. Publication made Feb'y 8th, 1879, by order of court at the request of T. N. Waul, of counsel for the defendant. C. Dart, clerk, by Geo. C. Rives, dep't."

(Across the seal thus:) Z. T. Fulmore, notary public, Travis Co., Texas; Z. T. Fulmore, notary public, Travis Co., Texas; Z. T. Fulmore, notary public, Travis Co., Texas.

75 *Deposition of D. G. Gregory.—Filed February 8th,* 1879.

Circuit court U. S., east'n dist. Tex.

MARY A. NICHOLS ET AL.
vs.
ALABAMA GOLD LIFE-INSURANCE COMPANY.

It is hereby agreed between the counsel for pl'ffs and def't that the answers to the within interrogatories may be taken before any officer authorized to take depositions in the county of Colorado, State of Texas, and that the depositions when taken may have the same effect as though taken by an officer of Fayette County, Texas.

This Feb'ry 5th, 1879.

WILLIE & CLEVELAND,
Att'ys for Pl'ffs.
WAUL & WALKER,
Att'ys for Def't.

Circuit court U. S., east'n dist. of Texas.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INS. CO.

It is hereby agreed between the parties plaintiff and defendant by their

counsel that the name D. G. Gregory is meant for "J. J. Gregory," appearing in the accompanying commission and copy of interrogatories and that the officer taking the depositions of D. G. Gregory may take the same under the annexed commission and that D. G. Gregory is meant wherever the name "J. J. Gregory" appears in said commission and copy
76 of interrogatories.

This Jan. 30.

WAUL & WALKER,
Att'ys for Def't.
WILLIE & CLEVELAND,
Att'ys for Pl'ffs.

Circuit court United States, eastern district of Texas.

MARY A. NICHOLS ET AL.
vs.
ALABAMA GOLD LIFE-INSURANCE COMPANY. } No. 1078.

The plaintiffs in the above-entitled suit, or their attorneys of record, Mess. Willie & Cleveland, of Galveston, Texas, will please take notice that five days after the service of a copy of the following interrogatories to J. J. Gregory, of Fayette County, Texas, a witness for defendant in the above-entitled cause, we will apply to the clerk of the circuit court of the United States for a commission to take the answers of said J. J. Gregory to said interrogatories.

WAUL & WALKER,
Att'ys for Def't.

Int. 1st. What is your profession, how long have you practiced it, where do you reside, and how long have you resided there, where have you last resided before acquiring your present domicile, and how long did you reside at your last residence?

Int. 2d. Were you acquainted with Charles Nichols during his lifetime; if so, how long were you acquainted with him, where did he live during your acquaintance with him, and how long did he live there?

77 Int. 3d. Were you acquainted with the family of the said Charles Nichols, and where were you acquainted with said family, and during what time? State the names and the relationship of all the members of his family, with whom you were acquainted, to said Charles Nichols?

Int. 4th. If you have answered that you knew any of his relations, state how many brothers and sisters of said Nicholls you knew, if any, and state if you knew his mother and father, or either of them, and where and for how long.

Int. 5th. Did you ever have any professional relations with any near relative of said Charles Nichols? If so, state what relative or relatives, and when.

Int. 6th. If you have answered that you ever attended the relatives of said Charles Nichols, as a physician, state for what disease or malady, state how many and the names of those you have so attended, if any, and state the kind of disease from which such relative or relatives were suffering.

Int. 7th. State, if within your knowledge, if any near relative of Charles Nichols was ever afflicted with any pulmonary complaint. If yea, state the name of such relative or relatives, and state, as near as you may be able, the time when such relative or relatives were so afflicted, and state the age of such relative or relatives.

Int. 8th. State if you know of the death of any near relative or relatives of said Charles Nichols, and as near as you may be able the
78 date of such death. State the nature of the disease which caused the death of such relative or relatives, and the name or names of the party or parties deceased and their relationship to said Charles Nichols.

Int. 9th. State fully anything and everything you may know concerning any pulmonary complaint with which any of the near relatives of said Charles Nichols may have been afflicted. State, if within your knowledge, if any near relative of said Charles Nichols was ever afflicted with or died of consumption, giving the name or names of such relative or relatives, and the date of such affliction or death, or both, as nearly as you may be able.

WAUL & WALKER,
Att'ys for Def't.

The foregoing interrogatories endorsed as follows, to wit: 1078. Mary A. Nichols et al. vs. Ala. Gold Life-Ins. Co. Interrogatories to J. J. Gregory. Filed Dec'r 23, 1878. C. Dart, clerk, by James T. Spann, dep't.

79 MARY A. NICHOLS
vs.
ALABAMA GOLD LIFE-INSURANCE COMPANY. } No. 1078.

Suit pending in U. S. circuit c't for E. dist. of Texas.

Cross-interrogatories to be propounded to J. J. Gregory, of Fayette Co., Texas, a witness for the defendant.

X-int. 1. This is a suit brought by Mrs. Mary A. Nichols, as the surviving wife of Charles Nichols, in her own behalf, and as guardian for her minor children, against the Alabama Gold Life-Insurance Company, to recover the amount of a policy of insurance issued by the said company on the life of said Charles Nichols, deceased, and which the said company has refused to pay and is resisting in this suit. Now, if in answering any of the various questions propounded to you by the defendant you have stated anything upon hearsay, or upon information derived from others, please distinguish the same, and specify in answer to this what you have answered of your own knowledge, what upon information from others, and what as matter of opinion. Declare fully and specify particularly.

WILLIE & CLEVELAND,
Att'ys for the Widow & Heirs of Charles Nichols, Pl'ff herein.

The foregoing endorsed thus: Filed Dec. 28, 1878. C. Dart, clerk, by James T. Spann, dept.

80 We consent that the name J. J. Gregory in the within interrogatories & commission be altered to D. G. Gregory.

WAUL & WALKER,
Att'ys for Def't.
WILLIE & CLEVELAND,
Att'ys for Pl'ffs.

81 I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, in the fifth circuit and district aforesaid, do hereby certify the foregoing to be a true and correct copy of the cross & direct interrogatories propounded to J. J. Gregory, of Fayette County, Texas, a witness on behalf of defendant, in cause No. 1078 on the law docket of said court, entitled Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company, as the same now appears on file in my office.

To certify which witness my hand and the seal of said court, at Galveston, in said district, this the 30th day of December, A. D. 1878.

[SEAL.] C. DART,
Clerk U. S. Circuit Court, E. D. T., at Galveston.
By JAMES T. SPANN,
Deputy.

The foregoing copy of direct & X interrogatories endorsed as follows, to wit: "No. 1078 C. L. Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company. Copy of direct & X interrogatories propounded to J. J. Gregory, of Fayette County, Texas."

82 UNITED STATES OF AMERICA,
Eastern District of Texas:

In U. S. circuit court at Galveston.

The President of the United States of America to any commissioner of the circuit court appointed by a circuit court of the United States, or notary public, or other officer authorized to take depositions to be used in courts of the United States, residing in the county of Fayette, Texas, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you, or either of you, and by these presents do give unto you full power and authority diligently to examine J. J. Gregory, a resident of the county of Fayette, State of Texas, upon certain interrogatories propounded to him in a cause wherein Mary A. Nichols and others are plaintiffs and The Alabama Gold Life-Insurance Company is defendant, now pending in the circuit court of the United States for the eastern district of Texas, in the fifth circuit, and therefore we command that you, at certain days and places to be appointed by you for that purpose, cause the said witness to come before you, and then and there examine him upon the said interrogatories and any cross-interrogatories (copies whereof are hereto annexed), on his corporal oath first taken before you upon the Holy Evangelists, or in such other solemn manner as is and may be authorized by law; and that you do take the answers of the witness to such interrogatories and reduce the same to writing, which shall be signed and sworn to by the said witness;

and you shall certify, under your hand and seal, that the same was signed and sworn to by the said witness before you, and shall seal them up in an envelope, with the interrogatories and this commission, with your name across the seal, and indorse on the envelope the names of the parties to the suit and the name of the witness, and direct the package to the "clerk of the circuit court of the United States for the eastern district of Texas, Galveston, Texas;" if sent by mail, the postmaster or his deputy mailing the same shall indorse thereon that he received them from the hands of the officer before whom they were taken.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court of the United States for the eastern district of Texas, at Galveston, in said district, this 31st day of December, A. D. 1878, and of American Independence the 103d year.

[SEAL.]

C. DART,
Clerk U. S. Circuit Court, Eastern District of Texas, at Galveston.
By JAMES T. SPANN, *Dept.*

83 The foregoing commission endorsed as follows, to wit: "C. L. No. 1078. In U. S. circuit court, eastern district of Texas. Mary A. Nichols et al. vs. The Alabama Gold Life-Ins. Company. Commission. Issued 31st day of Dec'r, A. D. 1878. C. Dart, clerk, by James G. Spann, dept'."

MARY A. NICHOLS ET AL.
vs.
ALABAMA GOLD LIFE-INSURANCE COMPANY. } No. 1078.

Suit pending in the circuit court U. S., east. dist. Texas.

Answers and depositions of D. G. Gregory, of Colorado County, State of Texas, to the accompanying interrogatories and cross-interrogatories propounded to him in the above-entitled cause, taken before Friench Simpson, a notary public in and for the county of Colorado and State of Texas, in accordance with the accompanying commission.

Answers of the witness D. G. Gregory.

To the first interrogatory he answers: I am a physician. I have
84 practiced my profession about thirty-five years. I reside in Alleyton, Colorado County, Texas. Have resided here in Alleyton since the 20th day of August, 1878. I resided for about seven years in La Grange, Fayette County, Texas, before moving to Alleyton. I first went to La Grange in 1849, and left there in 1861 and went to Fayetteville, Texas; then moved back to La Grange in 1871.

To the 2d int'g. he answers: I was acquainted with Charles Nichols during my first residence in La Grange; I also knew him while he lived in Galveston; had business relations with him, and was in his office frequently while he lived in Galveston. He lived in La Grange about three years, I think; do not know how long he lived in Galveston. I know he was in Galveston in 1871.

To the 3d int'y he answers: I was acquainted with the family of Charles Nichols. I was acquainted with his father in Tennessee, when I was a boy, having been brought up the neighborhood of the father of the said Charles Nichols. I was acquainted with Charles Nickols' mother and her family, in La Grange, about 1855; I knew them in La Grange about three years. I was acquainted with Ed. Nichols and Miss Hattie Nichols and Simeon Nichols, Charles Nichols, brothers and sister, and another sister, whose name I have forgotten. I do not remember the given name of Charles Nichols' mother.

85 To the 4th int'y he answers: I have answered this question in int'y 3d.

To the 5th int'y he answers: Yes; I attended his sister in La Grange about 1855; it was his youngest sister, the one whose name I have forgotten.

To the 6th int'y he answers: I only attended one, the sister above mentioned, who died with catamenial derangement.

To the 7th int'y he answers: I could not say that any of them were affected with pulmonary disease, that I knew.

To the 8th int'y he answers: The only death I know of was the sister mentioned in int'y 6th.

To the 9th int'y he answers: I know nothing further than is stated in answer to the foregoing interrogatories.

(Signed) D. G. GREGORY.

Sworn to and subscribed before me this 7th day of February, A. D. 1879, at Alleyton, Colorado County, Texas.

[SEAL.] FRIENCH SIMPSON,
Notary Public, Colorado County, Texas.

To the 1st cross-interrogatory he answers: The answers to the

86 foregoing interrogatories were stated from my own knowledge.

(Signed) D. G. GREGORY.

Sworn to and subscribed before me this 7th day of February, A. D. 1879, at Alleyton, Colorado County, Texas.

[SEAL.] FRIENCH SIMPSON,
N. P., C. C., Texas.

THE STATE OF TEXAS,
County of Colorado:

I, Friench Simpson, a notary public in and for the county of Colorado and State of Texas, do hereby certify that the foregoing answers of D. G. Gregory, the witness before named, were made before me, and were sworn to and subscribed before me by the said witness.

Given under my hand and official seal this the 7th day of February, A. D. 1879.

[SEAL.] FRIENCH SIMPSON,
Notary Public for Colorado County, Texas.

Notary fees, $10.00.

The foregoing deposition endorsed as follows, to wit: "Publication made by order of court at request of C. L. Cleveland, of counsel for plaintiffs,

Feb'y, 10, '79. C. Dart, clerk, by James T. Spann, dep'ty. Filed Febr'y 10, '79. C. Dart, clerk, by James T. Spann, dep't."

87 The envelope containing the foregoing deposition endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. Alabama Gold Life-Insurance Company. Deposition of D. G. Gregory. Clerk of the circuit court of the United States for the eastern district of Texas, Galveston, Texas. Received this package from the hands of Friench Simpson, the officer before whom the enclosed depositions were taken, & this package is forwarded in due course of mail. R. P. Tendick, J. H. P. Return to Logue & Simpson, attorneys at law, Columbus, Colorado County, Texas, if not delivered in 10 days. Received from the post-office at Galveston, Texas, Febr'y 8, 1879. C. Dart, clerk, by James T. Spann, dept. Filed Febr'y 8, 1879. C. Dart, clerk, by James T. Spann, dept.

88 Publication made by order of court, at request of C. L. Cleveland, of counsel for plaintiff, Febr'y 10, '79. C. Dart, clerk, by James T. Spann, dept."

(Across the seal thus:) "Friench Simpson, notary public, Colorado County, Texas. Friench Simpson, notary public, Colorado County, Texas. Friench Simpson, notary public, Colorado County, Texas."

Deposition of J. A. Nichols.—Filed February 19th, 1879.

Circuit court of the United States, eastern district of Texas.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY.

Interrogatories to be propounded to J. A. Nichols, a resident of New York City, State of New York, a witness for defendant in the above-entitled cause.

Int. 1st. What is your occupation and official position, and where do you reside?

Int. 2d. Do you know of any application for insurance upon the life of Charles Nichols, of Galveston, Texas, having been made by him in the month of May, 1870, to any life-insurance company? If so, state the date, if you recollect it, and the name of the insurance company to which such application, if any, was made.

Int. 3d. Do you know what action was taken upon the said ap-
89 plication of said Charles Nichols? If so, state specifically what was such action, and the reasons therefor.

Int. 4th. State anything further you may know concerning the matters heretofore interrogated upon which may benefit either the plaintiff or defendant.

WAUL & WALKER,
Att'ys for Def't.

Cross-interrogatories to be propounded to said J. A. Nichols.

X-int. 1. Did you receive the said application spoken of directly and personally, from Charles Nichols, or from some one else; and, if so, from whom?

X-int. 2. How was said application transmitted to you; how did you receive it; ank from whom did you receive it?

X-int. 3. Have you the application of which you have spoken; is it in writing, or was it in writing? Attach the same to your answer, if in your custody or control.

X-int. 4. If you say said application was refused then state to whom and by what means you communicated said refusal, if any there was.

WILLIE & CLEVELAND,
Att'ys for Pl'ffs.

We hereby waive notice and service of copy of within interrogatories, and agree that the answers to within interrogatories and cross-in-
90 terrogatories may be taken before any officer authorized to take depositions under the laws of the United States.

WILLIE & CLEVELAND,
Att'ys for Pl'ffs.

The foregoing interrogatories and cross-interrogatories indorsed thus: "Filed Feb'ry 1, 1879. C. Dart, clerk, by James T. Spann, dept."

91 I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, in the fifth circuit and district aforesaid, do hereby certify the foregoing to be true and correct copy of the direct and cross interrogatories propounded to J. A. Nichols, of the city, county, and State of New York, filed on the 1st day of February, A. D. 1879, in cause No. 1078 on the law docket of said court, entitled Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company, as the same now appears on file in my office.

To certify which witness my hand and seal of said court, at Galveston, in said district, this the first day of February, A. D. 1879.

[SEAL.] C. DART,
Clerk U. S. Circuit Court, E. D. T., at Galveston.
By JAMES T. SPANN,
Deputy.

The foregoing copy of direct & X interrogatories endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company. Copy of direct & X interrogatories to J. A. Nichols, of the city, county, and State of New York."

Feb'y, 10, '79. C. Dart, clerk, by James T. Spann, dep'ty. Filed Febr'y 10, '79. C. Dart, clerk, by James T. Spann, dep't."

87 The envelope containing the foregoing deposition endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. Alabama Gold Life-Insurance Company. Deposition of D. G. Gregory. Clerk of the circuit court of the United States for the eastern district of Texas, Galveston, Texas. Received this package from the hands of Friench Simpson, the officer before whom the enclosed depositions were taken, & this package is forwarded in due course of mail. R. P. Tendick, J. H. P. Return to Logue & Simpson, attorneys at law, Columbus, Colorado County, Texas, if not delivered in 10 days. Received from the post-office at Galveston, Texas, Febr'y 8, 1879. C. Dart, clerk, by James T. Spann, dept. Filed Febr'y 8, 1879. C. Dart, clerk, by James T. Spann, dept.

88 Publication made by order of court, at request of C. L. Cleveland, of counsel for plaintiff, Febr'y 10, '79. C. Dart, clerk, by James T. Spann, dept."

(Across the seal thus:) "Friench Simpson, notary public, Colorado County, Texas. Friench Simpson, notary public, Colorado County, Texas. Friench Simpson, notary public, Colorado County, Texas."

Deposition of J. A. Nichols.—Filed February 19th, 1879.

Circuit court of the United States, eastern district of Texas.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY.

Interrogatories to be propounded to J. A. Nichols, a resident of New York City, State of New York, a witness for defendant in the above-entitled cause.

Int. 1st. What is your occupation and official position, and where do you reside?

Int. 2d. Do you know of any application for insurance upon the life of Charles Nichols, of Galveston, Texas, having been made by him in the month of May, 1870, to any life-insurance company? If so, state the date, if you recollect it, and the name of the insurance company to which such application, if any, was made.

Int. 3d. Do you know what action was taken upon the said ap-
89 plication of said Charles Nichols? If so, state specifically what was such action, and the reasons therefor.

Int. 4th. State anything further you may know concerning the matters heretofore interrogated upon which may benefit either the plaintiff or defendant.

WAUL & WALKER,
Att'ys for Def't.

Cross-interrogatories to be propounded to said J. A. Nichols.

X-int. 1. Did you receive the said application spoken of directly and personally, from Charles Nichols, or from some one else; and, if so, from whom?

X-int. 2. How was said application transmitted to you; how did you receive it; ank from whom did you receive it?

X-int. 3. Have you the application of which you have spoken; is it in writing, or was it in writing? Attach the same to your answer, if in your custody or control.

X-int. 4. If you say said application was refused then state to whom and by what means you communicated said refusal, if any there was.

WILLIE & CLEVELAND,
Att'ys for Pl'ffs.

We hereby waive notice and service of copy of within interrogatories, and agree that the answers to within interrogatories and cross-in-
90 terrogatories may be taken before any officer authorized to take depositions under the laws of the United States.

WILLIE & CLEVELAND,
Att'ys for Pl'ffs.

The foregoing interrogatories and cross-interrogatories indorsed thus: "Filed Feb'ry 1, 1879. C. Dart, clerk, by James T. Spann, dept."

91 I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, in the fifth circuit and district aforesaid, do hereby certify the foregoing to be true and correct copy of the direct and cross interrogatories propounded to J. A. Nichols, of the city, county, and State of New York, filed on the 1st day of February, A. D. 1879, in cause No. 1078 on the law docket of said court, entitled Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company, as the same now appears on file in my office.

To certify which witness my hand and seal of said court, at Galveston, in said district, this the first day of February, A. D. 1879.

[SEAL.] C. DART,
Clerk U. S. Circuit Court, E. D. T., at Galveston.
By JAMES T. SPANN,
Deputy.

The foregoing copy of direct & X interrogatories endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company. Copy of direct & X interrogatories to J. A. Nichols, of the city, county, and State of New York."

92 UNITED STATES OF AMERICA,
Eastern District of Texas:

In U. S. circuit court at Galveston.

The President of the United States of America to any commissioner of the circuit court appointed by a circuit court of the United States, or notary public, or other officer authorized to take depositions to be used in courts of the United States, residing at the city of New York, New York, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you, or either of you, and by these presents do give unto you full power and authority diligently to examine J. A. Nichols, of the city, county, and State of New York, upon certain interrogatories propounded to him in a cause wherein Mary A. Nichols et al. are plaintiffs and the Alabama Gold Life-Insurance Company is defendant, now pending in the circuit court of the United States for the eastern district of Texas, in the fifth circuit, and therefore we command that you, at certain days and places to be appointed by you for that purpose, cause the said witness to come before you, and then and there examine him upon the said interrogatories and any cross-interrogatories (copies whereof are hereto annexed) on his corporal oath first taken before you upon the Holy Evangelists, or in such other solemn manner as is and may be authorized by law; and that you do take the answers of the witness to such interrogatories, and reduce the same to writing, which shall be signed and sworn to by the said witness; and you shall certify under your hand and seal that the same was signed and sworn to by the said witness, before you, and shall seal them up in an envelope, with the interrogatories and this commission, with your name across the seal, and indorse on the envelope the names of the parties to the suit, and the name of the witness, and direct the package to the "clerk of the circuit court of the United States for the eastern district of Texas, Galveston, Texas;" if sent by mail, the postmaster or his deputy mailing the same shall indorse thereon that he received them from the hands of the officer before whom they were taken.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court of the United States for the eastern district of Texas, at Galveston, in said district, this 1st day of February, A. D. 1879, and of American Independence the 103d year.

[SEAL.]

C. DART,
Clerk U. S. Circuit Court, Eastern District of Texas, at Galveston.
By JAMES T. SPANN, *Dep't.*

93 The foregoing commission endorsed as follows, to wit: "C. L. No. 1078. In U. S. circuit court, eastern district of Texas. Mary A. Nichols et al. vs. The Alabama Gold Life-Ins. Company. Commission. Issued 1st day of Febr'y, A. D. 1879. C. Dart, clerk, by James T. Spann, dept. Filed March 18, '79. C. Dart, clerk, by Geo. C. Rives, dep'ty."

UNITED STATES OF AMERICA,
Southern District of New York,
State of New York, City and County of New York, ss:

By this public instrument be it known to all whom the same doth or may in anywise concern that I, Joseph B. Nones, a notary public [SEAL.] in and for the State of New York, by letters patent under the great seal of the said State, duly commissioned and sworn, and dwelling in the city of New York, do hereby certify that, under and by virtue of several acts of Congress of the United States authorizing notaries public to take and certify oaths, affirmations, and acknowledgements in certain cases, thereby giving and granting to notaries public full powers
94 and authority to take depositions and to do such other acts in relation to evidence to be used in the courts of the United States, in the same manner and with the same effect as commissioners to take acknowledgements of bail and affidavits may now lawfully take and do, did call and cause to be and personally appear before me, at , in the city of New York, in the county and State aforesaid, J. A. Nichols, a witness on the part of the defendants, of sound mind and memory, and of lawful age (as stated in the annexed testimony of said witness for the defendants), in a civil suit now depending in the circuit court of the United States for the eastern district of Texas, at Galveston, in the 5th circuit and district aforesaid, wherein Mary A. Nichols et al. are plaintiffs and the Alabama Gold Life-Insurance Company, defendants (case No. 1078), and the said witness being by me first carefully examined and cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did then carefully examine the said witness, who did thereupon depose and testify as follows, as by the annexed deposition will appear.

Direct interrogatories and answers of said witness, J. A. Nichols.

Int. 1st. What is your occupation and official position, and where do you reside?

Ans'r. I am president of the Knickerbocker Life-Insurance
95 Company of the city of New York; I reside at No. 437 Clinton avenue, in the city of Brooklyn, N. Y.

Int. 2d. Do you know of any application for insurance upon the life of Charles Nichols, of Galveston, Texas, having been made by him in the month of May, 1870, to any life-insurance company? If so, state the date, if you recollect it, and the name of the insurance company to which such application, if any, was made.

Ans'r. I have no personal knowledge of any such application, but I have knowledge of such an application derived from the books and records of the Knickerbocker Life-Insurance Company kept in the transaction of its business. On reference to those books and records I find that in the month of May, 1870, an application was made to that company for a policy of insurance on the life of Charles Nichols, of Galveston, Texas.

Int. 3d. Do you know what action was taken upon the said application of said Charles Nichols? If so, state specifically what was such action and the reasons therefor.

Ans'r. I only know from the books and records referred to in my an-

swer to the second direct interrogatory. From them it appears that said application was disapproved by Dr. Jos. T. Scott, medical examiner of the company at New Orleans, but the cause of disapproval does not appear from said books and records.

Int. 4th. State anything further you may know concerning the
96 matters heretofore interrogated upon which may benefit either the plaintiff or defendant.

Ans'r. I know of nothing further concerning the matters heretofore interrogated upon which may benefit either the plaintiff or defendant.

(Signed) J. A. NICHOLS.

Cross-interrogatories and answers of said witness, J. A. Nichols.

X-int. 1. Did you receive the said application spoken of directly and personally from Charles Nichols, or from some one else; and, if so, from whom?

Ans'r. I did not receive said application directly or personally from Charles Nichols, or any one else.

X-int. 2. How was said application transmitted to you; how did you receive it, and from whom did you receive it?

Ans'r. Said application was probably transmitted by mail to said company from its agency in New Orleans.

X-int. 3. Have you the application of which you have spoken; is it in writing, or was it in writing? Attach the same to your answer, if in your custody or control.

Ans'r. I have not said application; I suppose from the books and records of said company that the same was in writing.

X-int. 4. If you say said application was refused, then state to
97 whom and by what means you communicated said refusal, if any there was.

Ans'r. I know from the books and records of said company that said application was disapproved by the medical examiner of said company at its New Orleans agency, but I have no knowledge or information as to whom or by what means said disapproval was communicated.

(Signed) J. A. NICHOLS.

Subscribed and sworn to before me this 11th day of February, 1879.

[SEAL.] J. B. NONES,

Notary Public, N. Y., No. 91 Duane street, cor. Broadway.

UNITED STATES OF AMERICA,

Southern District of Texas,

State of New York, City and County of New York, ss:

By this public instrument be it known to all whom the same doth or may in anywise concern that I, Joseph B. Nones, a notary pub-
[SEAL.] lic in and for the State of New York, by letters patent, under the great seal of the said State, duly commissioned and sworn, dwelling in the city of New York, do hereby certify that under and by virtue of several acts of Congress of the United States authorizing notaries public to take and certify oaths, affirmations, and acknowledge-
98 ments in certain cases, thereby giving and granting to notaries public full powers and authority to take depositions and to do such

acts in relation to evidence to be used in the courts of the United States, in the same manner and with the same effect as commissions to take acknowledgements of bail and affidavits may now lawfully take and do, do certify that the reason for taking the foregoing deposition of the said witness, J. A. Nichols, is that the same is necessary for the defendants in the said civil suit in the caption mentioned, which said caption is strictly true, and that the said witness lives in the city of Brooklyn, county of King, and State of New York, more than one hundred miles from Galveston, Texas, the place of trial of said civil suit.

I further certify that no notification was given by me to the adverse party to be present at the taking of said deposition and put interrogatories if they should think fit, and that neither the said adverse parties nor any attorney of theirs, residing or being within one hundred miles of New York City aforesaid at the time of taking said depositions, were present at the taking of the same, which was done by me in virtue of the annexed commission from the honorable the circuit court of the U. S. for the eastern district of Texas, in the 5th circuit and district aforesaid, at the city of Galveston, Texas.

I further certify that on the date hereof I was attended by the
99 said witness, J. A. Nichols, at my office, No. 91 Duane street, corner of Broadway aforesaid; that the said witness, J. A. Nichols, was by me first carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the preceding deposition of said witness, J. A. Nichols, was reduced to writing by me, and after being carefully read over to and approved by said witness, J. A. Nichols, he subscribed the same in my presence as the same appear, and I have retained the said deposition in my possession, without alteration, for the purpose of sealing up and directing the same, with this certificate of the reasons aforesaid for taking said deposition, with my own hand, to the court for which the same was taken.

I further certify that I am not of kin or of counsel or attorney to any one of the parties in said civil suit, or in any way interested in the event thereof.

Given under my hand and seal of office this 11th day of February, 1879, in the 103d year of the Independence of the United States.

[SEAL.] J. B. NONES,
Notary Public, N. Y., 91 Duane st.

Fee, $10, including postage & registration; paid by def'ts.
J. B. NONES,
N. Pub., N. Y.

100 The foregoing deposition endorsed thus: "Filed March 18, '79. C. Dart, clerk, by Geo. C. Rives, dep't."

The envelope containing the foregoing deposition endorsed as follows, to wit: "Case No. 1078, law docket. Circuit court of the U. S. for the 5th circuit, eastern district of Texas. Mary A. Nichols et al. vs. The Alabama Gold Life-Ins. Co. Deposition of J. A. Nichols for def'ts, taken before me, at my office in N. York City, 11 Feb'y, 1879, in virtue of enclosed authority. J. B. Nones, N. public. To the clerk of the honorable the circuit court of the U. S. A. for the eastern district of Texas, Galveston, Texas. Taken, sealed up, & by me mailed at N. York City, the 12th

day of Feb'y, 1879. J. B. Nones, N. pub., N. Y. Rec'd, New York, 12 Feb'y, 1879, from J. B. Nones, the within-named notary
101 public, this package to be sent hence to its destination by the U. S. mail. N. G. Sauson, ass't P. M. Rec'd from post-office at Galveston, Febr'y 19, '79. C. Dart, clerk, by James T. Spann, dept. Filed Febr'y 19, '79. C. Dart, clerk, by James T. Spann, dept. Publication made March 18, '79, at the request of Waul & Walker, counsel for def't, by order of court. C. Dart, clerk U. S. circ't c't, E. D. T., G., by Geo. C. Rives, dept. (Across the seal thus:) J. B. Nones, N. pub., N. Y. J. B. Nones, N. pub., N. Y."

Order.—Continuance.

From the minutes, December term, 1878. February 20th, 1879.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INS. CO. } 1078.

Continued on application of defendant.

102 *Deposition of J. C. McCorkle.—Filed March 11th*, 1879.

Suit pending in the circuit court of the United States, eastern dist. of Texas.

MARY A. NICHOLS ET AL.
vs.
ALABAMA GOLD LIFE-INSURANCE COMPANY. }

Interrogatories to be propounded to James C. McCorkle, a resident of Marshal County, Alabama, a witness for the defendant in above-entitled case.

Int. 1st. Where do you reside, how long have you resided there, and what is your occupation or profession, and how long have you practiced it?

Int. 2d. Were you acquainted with Charles Nichols in his life-time, and did you know the family of said Charles Nichols? If so, when and where?

Int. 3d. If you know the family of said Charles Nichols, state how many of his brothers and sisters you knew, and when and where you knew them.

Int. 4th. Did you ever have occasion or opportunity of knowing anything of the health of any of the near relatives of said Charles Nichols? If so, state what you know upon the subject, giving fully the particulars concerning any disease which any of the near relatives of the said Charles Nichols may have been afflicted with, and, as near as you may be able, the date of such affliction.

Int. 5th. State fully whatever may be within your knowledge concerning any near relative or near relatives of said Charles Nichols, suffering from any pulmonary disease, the name or names of such relative or

103 relatives of said Charles Nichols, the relationship to said Charles Nichols, and the time and place, as accurately as you may recollect, when and where they suffered from such disease?

Int. 6th. State if you know of the death of any near relative or relatives of said Charles Nichols, and as near as you can the time of the death of said relative of Charles Nichols; and state the nature of the disease and its character, and name it, of which any of said relatives of said Charles Nichols died; and state the relationship to said Charles Nichols of the deceased and the name of the deceased.

Int. 7th. State fully any and everything you may know concerning any pulmonary complaint with which any of the near relatives of said Charles Nichols may have been afflicted, stating the relationship; state whatever you may know of any of the near relatives of said Charles Nichols having been afflicted with consumption, giving the relationship and, as well as you may recollect, the time of such affliction or death.

WAUL & WALKER,
Att'ys for Def't.

We hereby waive notice & service of copy of interrogatories, and agree that commission issue upon these interrogatories and subjoined cross-interrogatories, and that answers to the same may be taken before any officer authorized to take depositions.

WILLIE & CLEVELAND,
Att'ys for Pl'ffs.

104 X-interrogatories to be propounded to James C. McCorkle, witness for defendant:

X-int. 1. This is a suit brought by Mary A. Nichols, as the surviving widow of Charles Nichols, in her own behalf and as guardian for he' minor children, against the Alabama Gold Life-Insurance Company, to recover the amount of a policy of insurance, issued by the said company, on the life of said Charles Nichols, deceased, and which the said company has refused to pay and is resisting in this suit. Have you any interest in this suit?

X-int. 2. If in answering any of the various questions propounded to you herein you have stated anything upon hearsay or upon information derived from others please distinguish the same, and specify in your reply hereto what you have answered of your own knowledge, and what upon information from others, and what as matter of opinion.

WILLIE & CLEVELAND,
Att'ys for Plaintiff.

105 UNITED STATES OF AMERICA,
Eastern district of Texas:

In U. S. circuit court, at Galveston.

The President of the United States of America to any commissioner of the circuit court appointed by a circuit court of the United States, or notary public, or other officer authorized to take depositions to be used in courts of the United States, at Marshall County, in the State of Alabama, greeting:

Know ye that we, in confidence of your prudence and fidelity, have ap-

pointed you, or either of you, and by these presents do give unto you full power and authority diligently to examine James C. McCorkle, a resident of Marshall County, Alabama, upon certain interrogatories propounded to him in a cause wherein Mary A. Nichols and others and the Alabama Gold Life-Insurance Company is defendant, now pending in the circuit court of the United States for the eastern district of Texas, in the fifth circuit; and therefore we command that you, at certain days and places to be appointed by you for that purpose, cause the said witness to come before you and then and there examine him upon the said interrogatories and any cross-interrogatories (hereto annexed), on his corporal oath, first taken before you upon the Holy Evangelists, or in such other solemn manner as is and may be authorized by law; and that you do take the answers of the witness to such interrogatories and reduce the same to writing, which shall be signed and sworn to by the said witness; and you shall certify under your hand and seal that the same was signed and sworn to by the said witness before you, and shall seal them up in an envelope, with the interrogatories and this commission, with your name across the seal, and indorse on the envelope the names of the parties to the suit and the name of the witness, and direct the package to the "Clerk of the circuit court of the United States for the eastern district of Texas, Galveston, Texas." If sent by mail the postmaster or his deputy mailing the same shall indorse thereon that he received them from the hands of the officer before whom they were taken.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court, and the seal of the circuit court of the United States for the eastern district of Texas, at Galveston, in said district, this 12th day of February, A. D. 1879, and of American Independence the 103d year.

[SEAL.] C. DART,
Clerk U. S. Circuit Court,
Eastern District of Texas, at Galveston.

106 The foregoing commission endorsed as follows, to wit: "C. L. No. 1078. In U. S. circuit court, eastern district of Texas. Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company. Commission. Issued 12th day of February, A. D. 1879. C. Dart, clerk."

THE STATE OF ALABAMA,
Marshall County:

Deposition of Dr. James C. McCorkle, examined on the 4th day of March, A. D. 1879, at the law office of Boyd and Jones, att'ys at law, in the town of Guntersville, State and county aforesaid, under and by virtue of a commission issued out of the United States circuit court, eastern district of the State of Texas, in a certain cause therein pending between Mary A. Nichols et al., plaintiffs, and the Alabama Gold Life-Insurance Company, defendant.

The said Dr. JAMES C. MCCORKLE, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first direct interrogatory he saith: In Marshal County, Ala-

bama, since January, 1850. I am a practicing physician since the year 1841.

To the 2d direct inter. he saith: I was; I did, in Marshall
107 County, Ala., in the year' 1851, 1852, & 1853; I was acquainted with the family three or four years after I came to the county.

To the 3d direct inter. he saith: I knew James Nichols, Edward Nichols, Sarah Jane Nichols, Elizabeth Nichols, Hettie Nichols, and Francis Nichols and Simeon Nichols; the foregoing are all the brothers and sisters of Charles Nichols that I knew; I knew them in Claysville, Marshall County, Ala., in the year 1850 and up to the time they left this county.

To direct int. 4th he saith: I attended on a half uncle of the said Charles Nichols, a Mr. William Sullivan, in a case of typhoid fever; the disease located itself on a pin'l*es* gland on the left side of his neck, & formed an abcess which discharged itself, and convalesence commenced. I also attended on a sister of Sullivan in an attack of ordinary bil*l*ious fever; this was in 1850 or 1851.

To the 5th direct int. he saith: I have no knowledge of any of the brothers or sisters of Charles Nichols having had any pulmonary disease.

To the 6th direct int. he saith: Of my own personal knowledge, I do not.

To the 7th direct inter. he saith: I do not know of any; *I do not know of any;* I was not the family physician of the Nichols family, and know nothing, of my own knowledge, of the general health of the
108 family. My observation of the family led me to observ*ation* that the family of brothers and sisters of Charles were of a delicate constitution.

To the 1st X-inter. he saith: None whatever.

To the 2d X-inter. he saith: I have answered no question except on my own knowledge, except one which was of opinion; that was as to the delicate health of the family.

JAMES C. McCORKLE, *M. D.*

I, Jno. D. Taylor, the notary public who took the foregoing deposition of James C. McCorkle, M. D., hereby certify that I am personally acquainted with the said witness, James C. McCorkle, and know him to be the identical person named in said commission; that he was sworn and examined as above stated, and that his evidence was taken down as near as might be in his own language, and was subscribed by him in my presence on this the 4th day of March, A. D. 1879; and I further certify that I am not of kin or coun*cil* for either one of the parties to this suit.

Given under my hand and seal of office, at office in Guntersville, Ala., this 4th day of March, A. D. 1879.

[SEAL.] JNO. D. TAYLOR,
Notary Public.

[One dollar. State of Alabama. 1 dollar 1. Tax on seals.]

2420——4

109 *Bill of costs.*

Commissioner's fees, Jno. D. Taylor	$5 00
State stamp for seal	1 00
Witness, McCorkle	2 50
	$8 50
By cash with inter	2 00
	$6 50
Postage	09

The foregoing deposition endorsed as follows, to wit: "Publication made by order of court at request of J. C. Walker, of counsel for def't, Mch. 11, '79. C. Dart, clerk, by James T. Spann, dept. Filed March 11, 1879. C. Dart, clerk, by James T. Spann, dept."

The envelope containing the foregoing deposition endorsed as follows, to wit. "No. 1078. Mary A. Nichols et al. vs. Ala. Gold Life-Ins. Co. Deposition of Dr. James C. McCorkle, clerk U. S. circuit court,
110 Galveston, Texas. Rec'd from the post-office at Galveston, Texas, March, 11, '79. C. Dart, clerk, by James T. Spann, dept. Filed March 11, 1879. C. Dart, clerk, by James T. Spann, dept. Publication made by order of court at request of J. C. Walker, of counsel for def't, March 11, '79. C. Dart, clerk, by James T. Spann, dept."

(Across the seal, thus:) "Jno. D. Taylor, notary public; Jno. D. Taylor, notary public; Jno. D. Taylor, notary public."

Depositions of Maria L. Rollings, Wm. McKee, & Chas. Taylor.—Filed March 11th, 1879.

MARY A. NICHOLS ET AL.
vs.
ALA. GOLD LIFE-INSURANCE COMPANY. } No. 1078.

Suit pending in the circuit court of the United States, eastern district of Texas.

The plaintiffs in the above numbered and styled cause, and their attorneys of record, Mess. Willie & Cleveland, will take notice that five days after the service of a copy of the following interrogatories, we will apply
111 for a commission to the clerk of the circuit court of the United States, eastern district of Texas to take the answers of Charles Taylor, Maria L. Rollings, William McKee, and Percival M. Bush, residents of *the* Marshall County, State of Alabama, witnesses for the defendant in said case.

WAUL & WALKER,
Att'ys for Def't.

Interrogatories to be propounded to Charles Taylor, Maria L. Rollings, William McKee, and Percival M. Bush.

Int. 1st. Where do you reside, and how long have you resided there?
Int. 2d. Were you acquainted with Charles Nichols during his life-time,

and were you acquainted with any of his family? If so, where, and during what time?

Int. 3d. If you were acquainted with any of his family, state their names and relationship to said Charles Nichols. State how many brothers & sisters of said Nichols you knew, and their names.

Int. 4th. Did you ever have occasion to know anything of the health of any of the near relatives of said Charles Nichols? If so, state what you know of the health of such relatives, whether robust or delicate.

Int. 5th. State whatever you may know of any of the near relatives of Charles Nichols suffering from any pulmonary disease, the name of any such relative, if within your knowledge, and the relationship of
112 such person to said Charles Nichols.

Int. 6th. State, if you know anything of any of the near relatives of said Charles Nichols having had consumption; if so, state when, the name of such relative or relatives, and the relationship to said Chas. Nichols.

Int. 7th. State if you know of the death of any near relative or relatives of said Nichols; if yea, state, as well as you remember, the time of such death or deaths, the names of the deceased and relationship to Charles Nichols, and the disease of which such person or persons died.

Int. 8th. If you have answered that any brother of the said Nichols is dead, state his age at the time of his death; and, further, state anything you may know of the health of any member of the said family as to being generally healthy or otherwise, and whether long-lived or otherwise.

WAUL & WALKER,
Att'ys for Def't.

The foregoing endorsed thus: "Filed Jan'y 2d, 1879. C. Dart, clerk, by James T. Spann, dep't.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY. } No. 1078.

113 Suit pending in the U. S. circuit court for the eastern district of Texas.

Cross-interrogatories to be propounded to Charles Taylor, Maria L. Rollings, William McKee, and Percival M. Bush, of Marshall County, Alabama, witnesses for defendant in the above-entitled case.

X-int. 1. This is a suit brought by Mrs. Mary A. Nichols, in her own behalf as widow of Charles Nichols, and in behalf of her minor children to recover the amount of five thousand dollars on a policy of insurance issued by the Alabama Gold Life-Insurance Company on the life of Charles Nichols, now deceased. Please state whether you or either of you have any interest in the subject-matter of this suit.

X-int. 2. What is your occupation, trade, or profession, and your age?

X-int. 3. If you say you or either of you are physicians, then state how long you have practiced that profession.

X-int. 4. If you say that any of the near relatives of Charles Nichols ever died, then state how you know the fact. If you say of any particu-

lar disease, then please state how you know what the disease was which caused such death, and whether you are skilled in determining the nature and symptoms of the various diseases "that flesh is heir to," or can you say of your own knowledge of what specific disease such relative of Charles Nichols died?

X-int. 5. Do you know of your own knowledge of what particular disease the person or persons of whom you are testifying died?

114 X-int 6th. If you say that any relative of Charles Nichols died of any particular disease, then say how you know it was that particular disease?

X-int. 7. How long was such person or persons sick in their last illness? How often did you see such person or persons during their last illness? Did you wait upon or attend such person or persons in their last sickness?

X-int. 8. Are you able of your own knowledge to distinguish and detect in a man or woman any of the following diseases: Pleurisy, pneumonia, bronchitis, laryngities, phthises pulmonatis, asthma, pericarditas congestion of the lungs, congestion of the liver, consumption, rheumatism of the heart. If you say you can, please state the particular and peculiar symptoms of each disease, and in what respect it differs or is to be distinguished from the other diseases mentioned; and give the symptoms that are peculiar to each, if you know?

X-int. 9. Can you state, of your own knowledge, that any relative of Charles Nichols died of either of the diseases above mentioned? If you say you can, then say how you know it, and what the particular disease, and your reasons at length for calling it so.

X-int. 10. Please state anything you may know in respect to this suit which may be of benefit to Mrs. Mary A. Nichols and her minor children, who are the plaintiffs in this suit.

WILLIE & CLEVELAND.
Att'ys for Plff's.

115 The foregoing cross-interrogatories endorsed as follows, to wit: "1078. Mary A. Nichols et al. vs. Alabama Gold Life-Ins. Co. X-interrogatories. Filed Jan'y 4, '79. C. Dart, clerk, by James T. Spann, dep't."

116 I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, in the fifth circuit and district aforesaid, do hereby certify the foregoing to be a true and correct copy of the direct and cross interrogatories propounded to Charles Taylor, Maria L. Rollings, William McKee, and Percival M. Bush, witnesses for defendant, in cause No. 1078, on the law docket of said court, entitled Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company, as the same now appears on file in my office.

To certify which witness my hand and the seal of said court, at Galveston, in said district, this the 8th day of January, A. D. 1879.

[SEAL.] C. DART,
Clerk U. S. Circuit Court, E. D. T., at Galveston,
By JAMES T. SPANN, *Deputy.*

The foregoing direct & X interrogatories endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company. Copy of direct & cross interrogatories propounded to Charles Taylor et al."

117 UNITED STATES OF AMERICA,
Eastern District of Texas:

In U. S. circuit court, at Galveston.

The President of the United States of America to any commissioner of the circuit court, appointed by a circuit court of the United States, or notary public, or other officer authorized to take depositions to be used in courts of the United States, residing in Marshall County, State of Alabama, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you, or either of you, and by these presents do give unto you full power and authority diligently to examine Charles Taylor, Maria L. Rollings, William McKee, and Percival M. Bush, of Marshall County, Alabama, each separate and apart from the others, upon certain interrogatories propounded to them in a cause wherein Mary A. Nichols and others are plaintiffs and the Alabama Gold Life-Insurance Company is defendant, now pending in the circuit court of the United States for the eastern district of Texas, in the fifth circuit; and therefore we command that you at certain days and places to be appointed by you for that purpose, cause the said witnesses to come before you, and then and there examine them and each of them upon the said interrogatories and any cross-interrogatories (copies whereof are hereto annexed) on their several corporal oaths first taken before you upon the Holy Evangelists, or in such other solemn manner as is and may be authorized by law; and that you do take the answers of the witnesses to such interrogatories and reduce the same to writing, which shall be signed and sworn to by the said witnesses; and you shall certify under your hand and seal that the same was signed and sworn to by the said witnesses before you, and shall seal them up in an envelope with the interrogatories and this commission, with your names across the seal, and indorse on the envelope the names of the parties to the suit and the names of the witnesses, and direct the package to the "Clerk of the circuit court of the United States for the eastern district of Texas, Galveston, Texas;" if sent by mail, the postmaster or his deputy mailing the same shall indorse thereon that he received them from the hands of the officer before whom they were taken.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court of the United States for the eastern district of Texas, at Galveston, in said district, this 8th day of January, A. D. 1879, and of the American Independence the 103d year.

[SEAL.]

C. DART,
Clerk U. S. Circuit Court, Eastern District of Texas, at Galveston.
By JAMES T. SPANN, *Dep't.*

lar disease, then please state how you know what the disease was which caused such death, and whether you are skilled in determining the nature and symptoms of the various diseases "that flesh is heir to," or can you say of your own knowledge of what specific disease such relative of Charles Nichols died?

X-int. 5. Do you know of your own knowledge of what particular disease the person or persons of whom you are testifying died?

114 X-int 6th. If you say that any relative of Charles Nichols died of any particular disease, then say how you know it was that particular disease?

X-int. 7. How long was such person or persons sick in their last illness? How often did you see such person or persons during their last illness? Did you wait upon or attend such person or persons in their last sickness?

X-int. 8. Are you able of your own knowledge to distinguish and detect in a man or woman any of the following diseases: Pleurisy, pneumonia, bronchitis, laryngities, phthises pulmonatis, asthma, pericarditas congestion of the lungs, congestion of the liver, consumption, rheumatism of the heart. If you say you can, please state the particular and peculiar symptoms of each disease, and in what respect it differs or is to be distinguished from the other diseases mentioned; and give the symptoms that are peculiar to each, if you know?

X-int. 9. Can you state, of your own knowledge, that any relative of Charles Nichols died of either of the diseases above mentioned? If you say you can, then say how you know it, and what the particular disease, and your reasons at length for calling it so.

X-int. 10. Please state anything you may know in respect to this suit which may be of benefit to Mrs. Mary A. Nichols and her minor children, who are the plaintiffs in this suit.

WILLIE & CLEVELAND.
Att'ys for Plff's.

115 The foregoing cross-interrogatories endorsed as follows, to wit: "1078. Mary A. Nichols et al. vs. Alabama Gold Life-Ins. Co. X-interrogatories. Filed Jan'y 4, '79. C. Dart, clerk, by James T. Spann, dep't."

116 I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, in the fifth circuit and district aforesaid, do hereby certify the foregoing to be a true and correct copy of the direct and cross interrogatories propounded to Charles Taylor, Maria L. Rollings, William McKee, and Percival M. Bush, witnesses for defendant, in cause No. 1078, on the law docket of said court, entitled Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company, as the same now appears on file in my office.

To certify which witness my hand and the seal of said court, at Galveston, in said district, this the 8th day of January, A. D. 1879.

[SEAL.] C. DART,
Clerk U. S. Circuit Court, E. D. T., at Galveston,
By JAMES T. SPANN, *Deputy.*

The foregoing direct & X interrogatories endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company. Copy of direct & cross interrogatories propounded to Charles Taylor et al."

117 UNITED STATES OF AMERICA,
Eastern District of Texas:

In U. S. circuit court, at Galveston.

The President of the United States of America to any commissioner of the circuit court, appointed by a circuit court of the United States, or notary public, or other officer authorized to take depositions to be used in courts of the United States, residing in Marshall County, State of Alabama, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you, or either of you, and by these presents do give unto you full power and authority diligently to examine Charles Taylor, Maria L. Rollings, William McKee, and Percival M. Bush, of Marshall County, Alabama, each separate and apart from the others, upon certain interrogatories propounded to them in a cause wherein Mary A. Nichols and others are plaintiffs and the Alabama Gold Life-Insurance Company is defendant, now pending in the circuit court of the United States for the eastern district of Texas, in the fifth circuit; and therefore we command that you at certain days and places to be appointed by you for that purpose, cause the said witnesses to come before you, and then and there examine them and each of them upon the said interrogatories and any cross-interrogatories (copies whereof are hereto annexed) on their several corporal oaths first taken before you upon the Holy Evangelists, or in such other solemn manner as is and may be authorized by law; and that you do take the answers of the witnesses to such interrogatories and reduce the same to writing, which shall be signed and sworn to by the said witnesses; and you shall certify under your hand and seal that the same was signed and sworn to by the said witnesses before you, and shall seal them up in an envelope with the interrogatories and this commission, with your names across the seal, and indorse on the envelope the names of the parties to the suit and the names of the witnesses, and direct the package to the "Clerk of the circuit court of the United States for the eastern district of Texas, Galveston, Texas;" if sent by mail, the postmaster or his deputy mailing the same shall indorse thereon that he received them from the hands of the officer before whom they were taken.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court of the United States for the eastern district of Texas, at Galveston, in said district, this 8th day of January, A. D. 1879, and of the American Independence the 103d year.

[SEAL.]

C. DART,
Clerk U. S. Circuit Court, Eastern District of Texas, at Galveston.
By JAMES T. SPANN, *Dep't.*

118 The foregoing commission endorsed as follows, to wit: "No. 1078. In U. S. circuit court, eastern district of Texas. Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company. Commission. Issued 8th day of January, A. D. 1879. C. Dart, clerk, by James T. Spann, dept."

THE STATE OF ALABAMA,
County of Marshall:

Deposition of Maria L. Rollings, a witness sworn on the 13th day of February, A. D. 1879, at the residence of the said witness, in the county and State aforesaid, under and by virtue of a commission issued out of the United States circuit court, eastern district, State of Texas, in a certain cause therein pending, between Mary A. Nichols et al., plaintiffs, and the Alabama Gold Life-Insurance Company, defendant.

The said MARIA L. ROLLINGS, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first direct interrogatory she saith: I reside at Claysville, Marshall County, Ala.; I have resided at Claysville nine years, and all my life within one mile of Claysville; I am now in my fifty-ninth year.

119 To the second direct interrogatory she saith: I was acquainted with him from the time he was born until he left here; I was acquainted with all of them; I knew Mr. Nichols (the old man) from the time he came to Claysville up to the time of his death; I knew his family up to the time they removed to Texas; I am not positive as to the date, but think it was either 1854, '55, or 1856.

To the 3d direct interrogatory she saith: James was the oldest, Edward was the next, Sarah Jane the next, Elizabeth, Charley the next, Hattie the next, Frank the next, and Simeon Nichols the youngest; this is my best recollection of the family; the foregoing are the names of the brothers and sisters of Charles Nichols, all children of Simeon & Eliza Nichols.

To the 4th direct interrogatory she saith: I did; I knew his grandfather & grandmother on his mother's side; they moved off from here, old people, to Mississippi; and on his father's side I knew a brother and sister of his father who lived to be very old people; James Nichols, a brother of Charles, was not healthy; he was sickly; he died of consumption, I rec'on; the doctors said that was what ailed him; a part of the brothers and sisters of Charles were delicate in health, and a part as robust as ordinary children; Charles was a healthy-looking boy when he left here.

To the 5th direct inter. she saith: James Nichols, a brother of Charles, who died, as was said, with consumption, is all the relative of his I

120 ever knew to have the disease.

To the 6th direct inter. she saith: I have stated that James, a brother of Charles, had died with consumption, as was reported by the doctors; I think James died in 1854, '5, or 1856, I cannot state positively which one of the three years.

To the 7th direct inter. she saith: I know of none except James Nichols, which I have stated above; I have stated that James Nichols was a brother of Charles Nichols; that the said James died between the years 1854 and 1856, of what the doctors called consumption.

To the 8th direct inter. she saith: I do not know his age at the time of

his, the said James Nichols' death; he was a young man, I suppose about twenty-five years of age; the brothers and sisters of Charles have been a short-lived family, but of what disease they have died I do not know.

To the 1st cross-int. she saith: I have not.

To the 2d cross-int. she saith: I am the widow of a farmer 58 years.

To the 3d cross-int. she saith: I am not a physician.

To the 4th cross-int. she saith: I knew it by general information; I saw him, the said James, when he was sick, and was at his mother's often after it was said that he was dead, & did not see him; and his
121 (James') mother talked to me about his death; I do not know what disease the said James died of, except that doctors who waited on him said it was consumption; I am not skilled; I cannot say of my own knowledge of what specific disease the said James Nichols died.

To cross-int. 5th she saith: I have just answered that. I do not.

To cross-int. 6th she saith: I only know it by information derived from the doctors.

To cross-int. 7th she saith: My best recollection is that the said James Nichols lay sick five or six months. I think he was taken down in the fall and died the next spring. I cannot recollect; I saw him frequently; I did not wait on him.

To cross-int. 8 she saith: I am not.

To cross-int. 9 she saith: I cannot.

To cross-int. 10 she saith: I can state nothing further.

(Signed) her MARIA L. + ROLLINGS. mark.

THE STATE OF ALABAMA,
Marshal County:

Deposition of William McKee, a witness sworn on the 13th day of February, A. D. 1879, at the residence of the said McKee, in the county and State aforesaid, under and by virtue of a commission issued out
122 of the United States circuit court, eastern district, State of Texas, in a certain cause therein pending between Mary A. Nichols et al., plaintiffs, and the Alabama Gold Life-Insurance Company, defendant.

The said WILLIAM MCKEE, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first direct interrogatory he saith: I reside in Marshall County, Ala.; was born and raised here—near Claysville, Ala.

To int. 2d he saith: I was from the time he was born until he left this part of the country; I knew the family until they left here; we lived within ¾ of a mile of each other; the family left here in 1855 or 1856.

To int. 3d he saith: James, Edward, and Simeon, Sarah Elizabeth, Hettie, and Francis Nichols, these are the brothers and sisters of the said Charles Nichols.

To int. 4th he saith: The family were all delicate that I knew.

To int. 5th he saith: It was said that James Nichols, a brother of Charles, died of consumption; that was what the doctors pronounced his

disease. James was the only one of the brothers of Charles Nichols that died here; all the balance, both brothers and sisters, moved off from here ao Texas.

To int. 6th he saith: I have answered this int. in my answer to 5th int'r., except as to the time of James Nichols' death, which oc-
123 curred in 1854 or 1855, I am not certain which year.

To 7th int. he saith: I do; it was in 1854 or 185'; James Nichols; brother; the doctors said it was consumption.

To int. 8th he saith: I suppose James Nichols was about 24 or 25 years old when he died; I think some of the family connection were long-lived; all the family of brothers and sisters were delicate, and have proved to be short-lived.

To the 1st cross-interrogatory he saith: I have not.

To 2d cross-inter. he saith: I am a farmer; will be 50 years old in August.

To 3d cross-inter. he saith: I am not.

To cross-inter. 4 he saith: My best impression is that I was at the burying of James Nichols, a brother of Charles; I only knew it from the information derived from the doctors; I am not; I do not know of my own knowledge of what specific disease the said James died.

To cross-int. 5 he saith: I do not.

To cross-int. 6 he saith: I only know from what the doctors said about it.

To cross-int. 7 he saith: I judge James Nichols was sick twelve months, may be longer; I saw him frequently; I did not wait upon him.
124 To cross-int. 8 he saith: I cannot.

To cross-int. 9 he saith: I cannot.

To cross-int. 10 he saith: I can state nothing more.

(Signed) W. McKEE,

THE STATE OF ALABAMA,
Marshall County:

Deposition of Charles Taylor, a witness sworn and examined on the 22d day of February, A. D. 1879, at the office of Boyd & Jones, att'ys at law in the town of Guntersville, State and county aforesaid, under and by virtue of a commission issued out of the United States circuit court, eastern district of the State of Texas, in a certain cause therein pending between Mary A. Nichols et al., plaintiffs, and the Alabama Gold Life-Insurance Company, defendant.

The said CHARLES TAYLOR, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first direct interrogatory he saith: I live on the Gunterville and Bellefonte road, five miles above Claysville, in Marshall County, Ala.; I came to the place where I now reside in 1865; have made 13 crops in the same place.

To the 2d inter. he saith: I was acquainted with him until he was 18 years old; I never saw him afterwards; I was—his mother was
125 raised near me until she was married, and lived near me until after

her husband's death; I never saw her after he moved to Texas; Charles Nichols' mother was a niece of mine; she was my sister's daughter.

To the 3d direct inter. he saith: I knew Charles Nichols' father, mother, brothers, and sisters; his fathers name was Simeon Nichols; Eliza Nichols was his mother; his brothers were James, Edward, and Simeon Nichols; his sisters were named Sarah Jane, Elizabeth, Hettie, and Francis Nichols.

To the 4th direct inter. he saith: I did; none of the family were very robust. James Nichols died here at Claysville; he was a healthy boy up to manhood, and it was generally thought that he brought on the disease of which he died by his own dissipation.

To the 5th direct inter. he saith: I know of none of his near relatives, except his brother James Nichols, ever having had any pulmonary disease.

To the 6th direct inter. he saith: I know of none of his near relatives having had consumption, except his brother James, who it was said had consumption; James Nichols died at Claysville, Ala., in 1855 or 1856.

To the 7th direct inter. he saith: I do; I know of the death of the said Charles Nichols' father, and of his brother James as before stated. I think that Simeon, the father of Charles Nichols, died in 1850 or 1851, and that the brother of said Charles, James Nichols, died as before stated in 1855 or 1856; Simeon, the father of Charles, died of what was called pneumonia; James, the brother of said Charles, died of what was called consumption.

126 To direct inter. 8th he saith: James, the brother of said Charles Nichols, was at the time of his death, I think, about twenty-five years old; the family was considered a healthy family; his relatives on both sides, as far as I know, were healthy. His father, Simeon, was on old man at his death, and his mother lived to be about sixty years old; the brothers & sisters, as I understand, have proved to be short-lived family, the sisters of said Charles Nichols dying, as I have been informed, in child-bed or in giving birth to their first children after marriage; that is, two of the sisters; one sickened and died before she was grown. Edward Nichols, a brother of Charles, died in the city of New York, and it was reported that he had consumption, but I do not know it of my own knowledge.

To the 1st cross-inter. he saith: I have not.

To the 2d X-inter. he saith: Farming and nothing else; I am 73 years old.

To the 3d X-inter. he saith: I am not.

To the 4th X-inter. he saith: I know it by the fact that was and is a notorious fact; everybody in the community knew it. I know only what the doctors stated about it. I am not skilled in determining the symptoms and nature of diseases. I cannot state of my own knowledge
127 of what specific disease any of the relatives of Charles Nichols died.

To the 5th X-inter. he saith: I do not.

To the 6th X-inter. he saith: By information from the doctors.

To the 7th X-inter. he saith: I do not know. I suppose the old man, Simeon Nichols, lived about 2 weeks. James, the brother of Charles, lived on a good while. I did not see the old man but once; I saw James frequently. I did not.

To the 8th X-inter. he saith: I am not.
To the 9th X-inter. he saith: I cannot.
To the 10th X-inter. he saith: I can state nothing more.

(Signed) CHARLES his + mark TAYLOR.

I, Jno. D. Taylor, the notary public by whom the foregoing depositions were taken under and by the commission hereto attached, hereby certify that I am personally acquainted with the said witnesses, Maria L. Rollings, William McKee, and Charles Taylor, and know them to be the identical Maria L. Rollings, William McKee, and Charles Taylor named in said commission; that they and each of them were sworn and examined as above stated, and that their evidence was taken down as near as could be in their own language, and was subscribed by each of said wit-
128 nesses in my presence on the day mentioned in the caption of this certificate; and I further certify that I am not of kin or of counsel to either one of the parties to this suit, and in no way interested in the result thereof.

In witness whereof I have hereunto set my hand and affixed my seal of office at office, in the town of Guntersville, Alabama, this 5th day of March, A. D. 1879.

[SEAL.] JNO. D. TAYLOR,
Notary Public.

[One dollar. State of Alabama. 1 dollar 1. Tax on seals.]

Bill of costs.

Jno. D. Taylor, N. P., for taking depositions of M. L. Rollings, W. McKee, Chas. Taylor	$10 00
State stamp on seal	1 00
Witness M. L. Lollings	1 50
" Wm. McKee	1 50
" Charles Taylor	2 60
	$16 60
Postage on this	21
	$16 81

The foregoing depositions endorsed as follows, to wit: "Publication made by order of court at request of J. C. Walker, of counsel for def't, March 11, '79. C. Dart, clerk, by James T. Spann, dept. Filed March 11, 1879. C. Dart, clerk, by James T. Spann, dept."

129 The envelope containing the foregoing depositions endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. Ala. Gold Life-Ins. Co. Depositions of Maria L. Rollings, William McKee, Charles Taylor. Clerk U. S. circuit court, Galveston, Texas. Rec'd from the post-office at Galveston, Texas, March 11, '79. C. Dart, clerk, by James T. Spann, dept. Filed March 11, 1879. C. Dart, clerk, by James T. Spann, dept. Publication made by order of court at request of J. C. Walker, of counsel for def't, March 11, 1879. C. Dart, clerk, by James T. Spann, dept."

(Across the seal thus:) "Jno. D. Taylor, notary public. Jno. D. Taylor, notary public. Jno. D. Taylor, notary public."

130 *Interrogatories to George F. Sniffin.—Filed March 19th*, 1879.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE CO.

To Messrs. WILLIE & CLEVELAND, *Attorneys of Record:*

Please take notice that five days after service upon you of a copy of the following interrogatories we will apply to the clerk of the circuit court of the United States for a commission to take the deposition of Geo. F. Sniffen, a resident of the State and city of New York, a witness for defendant.

WAUL & WALKER,
Att'ys for Def't.

Interrogatories to Geo. F. Sniffen.

Int'y 1st. Do you know of the application of Charles Nichols, of Galveston, Texas, to the Knickerbocker Life-Insurance Company for life insurance? If yea, state your official connection with the said company and the facts which enable you to know of said application.

Int. 2d. Do you know of the acceptance or rejection of said Charles Nichols as a risk upon said application? If yea, state what you know upon the subject.

Int'y 3d. Are you acquainted with the books of said Knicker-
131 bocker Life-Insurance Company? If yea, state if they are correctly kept, and state if they were correctly kept at the time said application was made.

Int. 4th. If you have answered in response to the foregoing interrogatories that the said Charles Nichols made application to said company for insurance upon his life, state the date of the same.

Int. 5th. If you have stated that said risk was rejected or declined, state the reason therefor.

WAUL & WALKER, *For Def't.*

The foregoing interrogatories endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. Ala. Gold Life-Ins. Co. Interrogatories to Geo. F. Sniffen. Filed March 19, 1879. C. Dart, clerk."

Writ to serve int'g's to Geo. F. Sniffen.—Issued March 19th, 1879.

UNITED STATES OF AMERICA,
Eastern District of Texas:

In United States circuit court at Galveston.

132 MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE CO. } No. 1078.

The President of the United States to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to serve the plaintiffs in the above-entitled

cause or their attorneys of record, Mess. Willis & Cleveland, with the accompanying certified copy of interrogatories propounded in said cause by the defendant to Geo. F. Sniffen, a witness for def't, residing in the city, county, and State of New York, and you will also serve at the same time, the notice by defendant to said plaintiffs attached to and contained in said copy of interrogatories.

Herein fail not and due return of this writ make.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the eastern district of Texas, at Galveston, this 19th day of March, A. D. 1879.

[SEAL.]

C. DART,
Clerk U. S. Circuit Court, E. D. T., G.,
By JAMES T. SPANN, *Dept.*

Marshal's return.

Received this writ on the 19th day of March, 1879, and exe-
133 cuted the same, on the 20th day of March, 1879, by delivering to A. H. Willis, one of the attorneys of record in person, at Galveston, Texas, in my district the accompanying copy of interrogatories and notice named in this writ, certified by the clerk of this court.

WM. J. PHILLIPS,
U. S. Marshal, Eastern District of Texas,
By W. T. CLAYTON, *Deputy.*

The foregoing writ endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Co. Writ to serve interrogatories. Issued March 19th, 1879. C. Dart, clerk, by James T. Spann, dep't. Returned & filed 22d day of March, 1879. C. Dart, clerk, by James T. Spann, dept."

X-interrogatories to George F. Sniffen.—Filed March 24th, 1879.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE CO.

134 In circuit court of U. S. for the E. dist. of Texas.

Cross-interrogatories to be propounded to Geo. F. Sniffen, witness for the defendant in the above-entitled cause.

X-int. 1. If you say you know of the application of Charles Nichols, of Galveston, to the Knickerbocker Life-Insurance Company for insurance on his life, then please state whether said application was in writing or verbal, and your means of knowledge.

X-int. 2. If you say you know of the acceptance or rejection of the said Charles Nichols, then say whether said rejection or acceptance was in writing or otherwise, and your means of knowledge.

X-int. 3. If you say that the said application was in writing, or that the said rejection or acceptance was in writing, then please attach to your an-

swers herein the said original application and attach also the original of said rejection or acceptance of risk.

X-int. 4. If, in answering the 5th direct interrogatory, you state that any reason was ever assigned or given therefor, state by whom and by what authority was such reason given, to whom was it given, and when; was it in writing or verbal. If in writing, attach the same hereto connected with your deposition.

X-int. 5. How long have you been in the employ of the Knickerbocker Life-Ins. Company, and in what capacity?

X-int. 6. Were you ever at any time acquainted with Charles
135 Nichols; if so, when and where, and how long?

X-int. 7. Do you know anything about him, or any application of his for insurance on his life, of your own personal knowledge; or, if you say you knew of it, then say whether that knowledge was derived from Charles Nichols or the hearsay of other persons.

WILLIE & CLEVELAND,
Att'ys for Pl'ffs.

The foregoing X-interrogatories endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. Alabama Gold Life-Ins. Co. X-interrogatories to Geo. F. Sniffen. Filed March 24, '79. C. Dart, clerk, by James T. Spann, dept. Willie & Cleveland."

Interrogatories to Percival M. Bush & Jas. McDonald.—Filed March 28th, 1879.

Circuit court U. S., east'n dist. of Texas.

MARY A. NICHOLS ET AL.
vs.
ALABAMA GOLD LIFE-INSURANCE COMPANY.

To Mess. WILLIE & CLEVELAND,
Att'ys of record for Pl'ffs; or the Plaintiffs in said case.

136 You will please take notice that five days after the service upon you of a copy of the following interrogatories, we will apply to the clerk of the circuit court of the United States, eastern district of Texas, for a commission to take the depositions of Percival M. Bush and James McDonald, witnesses for the defendant in above-entitled case, and residents of the State of Alabama, Marshall County.

WAUL & WALKER,
Att'ys for Def't.

Interrogatories to be propounded to Percival M. Bush and James McDonald.

Int. 1st. What is your occupation or profession; how long have you practiced it, and where do you reside?

Int. 2d. Do you know the family, or have you ever known the family, or any members thereof, of Charles Nichols, formerly of Alabama?

Int. 3d. If you have answered that you have been acquainted with the family of Charles Nichols, state where and when you knew them, and state what relationship they bore to him.

Int. 4th. Do you know anything of any pulmonary disease of which any of the relatives of said Charles Nichols sufferred during your acquaintance with the family? If yea, state the name of such relative of said Nichols so afflicted, and state the date of such affliction, and state
137 the relation he or she bore to said Charles Nichols.

Int. 5. Do you know of the death of any member of the family to which said Charles Nichols belonged? If so, state if within your knowledge, as well as you may recollect, the date of death, and the nature and name of the disease causing such death; and state the name of such relative of Charles Nichols, and the relationship to said Charles Nichols.

WAUL & WALKER,
Att'ys for Def't.

The foregoing interrogatories endorsed as follows, to wit, "No. 1078. Mary A. Nichols et al. vs. Ala. Gold Life-Ins. Co. Interr'g's to Percival M. Bush and James McDonald. Filed March 28, 1879. C. Dart, clerk, by James T. Spann, dept."

Writ to serve int'g's to P. M. Bush & Jas. McDonald.—Issued March 29th, 1879.

UNITED STATES OF AMERICA,
Eastern District of Texas:

In United States circuit court, at Galveston.

138 MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY. } No. 1078.

The President of the United States to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to serve the plaintiffs in the above-entitled cause, or their attorneys of record, Messrs. Willie & Cleveland, with the accompanying certified copy of interrogatories propounded in said cause by the defendant to Percival M. Bush and James McDonald, witnesses for the defendant, residents of Marshall County, Alabama, and you will also serve at the same time the motion by defendant to said plaintiffs, attached to and contained in said copy of interrogatories. Herein fail not, and due return of this return make.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the eastern district of Texas, at Galveston, this 29th day of March, A. D. 1879.

[SEAL.]

C. DART,
Clerk U. S. Circuit Court, E. D. T., G.,
By JAMES T. SPANN, *Dept.*

Marshal's return.

Received this writ on the 29th day of March, 1879, and executed the same on the 31st day of March, 1879, by delivering to A. H. Willie,
139 attorney of record in the within cause, in person, at Galveston, in my district, the accompanying copy of interrogatories and notice named in this writ, certified by the clerk of this court.

WM. J. PHILLIPS,
U. S. Marshal, Eastern District of Texas,
By W. T. CLAYTON, *Deputy.*

The foregoing writ endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company. Writ to serve interrogatories. Issued M'ch 29, 1879. C. Dart, clerk, by James T. Spann, dept. Returned & filed 1st day of April, 1879. C. Dart, clerk, by James T. Spann, dept."

Order appointing Rufus K. Boyd & Thos. C. Barclay special commissioners.—From the minutes, March term, April 11th, 1879.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE CO. } 1078.

140 Upon application of the counsel for defendant it is ordered by the court that Rufus K. Boyd, of Marshall County, Alabama, & Thomas C. Barclay, of Madison County, Alabama, be appointed special commissioners, for them or either of them, to take the testimony of James McCorkle, Percival M. Bush, and James McDonald, witnesses for the defendant, and return the same according to law.

X-interrogatories to P. M. Bush & Jas. McDonald.—Filed April 12th, 1879.

In circuit court for eastern district of Texas.

MARY A. NICHOLS ET AL.
vs.
ALABAMA GOLD LIFE-INSURANCE COMPANY.

Cross-interrogatories to be propounded to Percival M. Bush and James McDonald, witnesses for the defendant in this cause:

X-int. 1. This is a suit brought by Mrs. Mary A. Nichols, in her own behalf as the widow of Charles Nichols, and in behalf of her minor children, for whom she is guardian, to recover the amount of five thousand on a policy of insurance, issued by the Alabama Gold Life-Insurance Company, on the life of Charles Nichols, now deceased. Please state if you have any interest, and what, in the subject-matter of this suit.

X-int. 2. If in answering any of the *plaintiffs'* interrogatories you have stated anything not within your personal knowledge, but derived
141 from information given to you by others, then please say in answering this, what portion or portions you have stated on your own

personal knowledge, and what from information, and distinguish the same particularly.

X-int. 3. State anything known to you in regard to this suit which will be of benefit to Mrs. Mary Nichols and children, plaintiffs, as if specially interrogated.

WILLIE & CLEVELAND,
Att'ys for Pl'ffs.

The foregoing X-interrogatories, endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. The Alabama Gold Life-Ins. Co. X-interrogatories. Filed Ap'l 12th, 1879. C. Dart, clerk."

Direct & X-interrogatories to James McCorkle.—Filed April 15th, 1879.

MARY A NICHOLS ET AL.
vs.
ALA. GOLD LIFE-INS. CO.

Suit pending in circ't court U. S., eastern dist. of Texas.

Mess. WILLIE & CLEVELAND,
Att'ys of record for Plaintiffs:

You will please take notice that *after* five days after the service of a copy of the following interrogatories upon you, we will apply to the
142 clerk of the circuit court of the United States for the eastern district of Texas for a commission to take the answers to said interrogatories of James McCorkle, a resident of Marshall County, Alabama, a witness for the defendant in above-styled cause.

Interrogatories to be propounded to James McCorkle.

Int. 1st. What is your profession, and how long have you practiced it?

Int. 2d. Were you acquainted with Charles Nichols, formerly of Marshall County, Alabama, and his family; if so, when?

Int. 3d. Do you know anything of any member or members of the family, or any near relative of Charles Nichols, being afflicted at any time with any pulmonary disease? If so, state the name or names of such relative, the relationship to Charles Nichols, and the time of such affliction as near as you may be able.

Int. 4th. Do you know of the death of any of the brothers or sisters of said Charles Nichols? If so, state if within your knowledge the name or names of such persons deceased, the relationship to said Charles Nichols, and the time as near as you may be able, when such relative of Charles Nichols died.

Int. 5th. If you state that you know of the death of any relative of Charles Nichols, state of what disease he, she, or they died, and, as
143 near as you may be able, the date of death.

WAUL & WALKER,
Att'ys for Def't.

Cross-interrogatories to be propounded to James McCorkle, the witness named in the foregoing notice.

X. 1. This is a suit pending in the U. S. circuit court for the eastern district, in which the plaintiff seeks to recover the amount of a policy of insurance upon the life of one Charles Nichols, deceased, issued by the defendant company. Have you not testified by deposition before one Jno. D. Taylor, a notary public, heretofore in this cause?

X. 2. Are your answers heretofore given in the deposition referred to in any respect different from those now given; and, if so, in what respect?

X-int. 3. If in answering any of the questions propounded by the defendant herein you have stated anything upon hearsay or upon information derived from others, please distinguish the same, and specify in your reply hereto what you have answered of your own knowledge and what upon information from others, and what as matter of opinion.

X. 4. Are you acquainted with Jno. D. Taylor, notary public, of Marshall County, Alabama? If so, please state whether he is absent from his place of abode or not; is he sick, or in any way incapacitated from
144 performing the ordinary and usual duties pertaining to his office as notary public; and, if so, for how long has such inability existed?

WILLIE & CLEVELAND,
Att'ys for Pl'ffs.

The foregoing direct and cross-interrogatories endorsed as follows, to wit: "C. L. 1078. Mary A. Nichols et al. vs. Alabama Gold Life-Insurance Co. Interrogatories and cross-int'g's to James McCorkle. Filed April 15, '79. C. Dart, clerk. Iss'd copy & com'n Ap'l 16, '79."

Deposition of Geo. F. Sniffen.—Filed April 16th, 1879.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE CO.

To Mess. WILLIE & CLEVELAND,
Attorneys of Record:

Please take notice that five days after service upon you of a copy the following interrogatories we will apply to the clerk of the circuit court of the United States for a commission to take the deposition of
145 Geo. F. Sniffen, a resident of the State and city of New York, a witness for defendant.

WAUL & WALKER,
Att'ys for Def't.

Interrogatories to Geo. F. Sniffen.

Int'y 1st. Do you know of the application of Charles Nichols, of Galveston, Texas, to the Knickerbocker Life-Insurance Company for life-insurance? If yea, state your official connection with the said company, and the facts which enabled you to know of such application.

Int. 2nd. Do you know of the acceptance or rejection of said Charles Nichols as a risk upon said application? If yea, state what you know upon the subject.

Int. 3d. Are you acquainted with the books of *of* said Knickerbocker Life-Insurance Company? If yea, state if they are correctly kept, and state if they were correctly kept at the time said application was made.

Int. 4th. If you have answered in response to the foregoing interrogatories that the said Charles Nichols made application to said company for insurance upon his life, state the date of the same.

Int. 5th. If you have stated that said risk was rejected or declined, state the reasons therefor.

WAUL & WALKER,
For Def't.

146 The foregoing direct interrogatories endorsed as follows, to wit: "Filed March 19, 1879. C. Dart, clerk."

In circuit court of U. S. for the E. dist. of Texas.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY.

Cross-interrogatories to be propounded to Geo. F. Sniffen, a witness for the defendant, in the above-entitled cause.

X-int. 1. If you say you know of the application of Charles Nichols, of Galveston, to the Knickerbocker Life-Insurance Company for insurance on his life, then please state whether said application was in writing or verbal, and your means of knowledge.

X-int. 2. If you say you know of the acceptance or rejection of the said Charles Nichols, then say whether said rejection or acceptance was in writing or otherwise, and your means of knowledge.

X-int. 3. If you say that the said application was in writing, or that the said rejection or acceptance was in writing, then please attach to your answers herein the said original application, and attach also the original of said rejection or acceptance of risk.

X-int. 4. If in answering the 5th direct interrogatory you state that any reason was ever assigned or given therefor, state by whom and by what authority was such reason given; to whom was it given, and when; was it in writing or verbal; if in writing, attach the same hereto connected with your deposition.

147 X-int. 5th. How long have you been in the employ of the Knickerbocker Life-Ins. Company, and in what capacity?

X-int. 6. Were you ever at any time acquainted with Charles Nichols; if so, when and where, and how long?

X-int. 7. Do you know anything about him, or any application of his for insurance on his life of your own personal knowledge, or if you say you knew of it, then say whether that knowledge was derived from Charles Nichols, or the hearsay of other persons.

WILLIE & CLEVELAND,
Att'ys for Pl'ffs.

The foregoing endorsed thus: "Filed March 24, '79. C. Dart, clerk, by James T. Spann, dept."

148 I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, in the fifth circuit and district aforesaid, do hereby certify the foregoing to be a true and correct copy of the direct and cross-interrogatories propounded to Geo. F. Sniffen, of the city, county, and State of New York in cause No. 1078 on the law docket of said court, entitled "Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company," as the same now appears on file in my office.

To certify which, witness my hand and the seal of said court, at Galveston, in said district, this the 25th day of March, A. D. 1879.

[SEAL.] C. DART,
Clerk U. S. Circuit Court, E. D. T., at Galveston,
By JAMES T. SPANN, *Deputy.*

149 UNITED STATES OF AMERICA,
Eastern District of Texas:

In U. S. circuit court, at Galveston.

The President of the United States of America to any commissioner of the circuit court appointed by a circuit court of the United States, or notary public, or other officer, authorized to take depositions to be used in courts of the United States, residing at New York City, State of New York, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you, or either of you, and by these presents do give unto you full power and authority diligently to examine George F. Sniffen, of the city, county, and State of New York, a witness on behalf of defendant, upon certain interrogatories propounded to him in a cause wherein Mary A. Nichols et al. are plaintiffs and the Alabama Gold Life-Insurance Company is defendant, now pending in the circuit court of the United States for the eastern district of Texas, in the fifth circuit, and therefore we command that you, at certain days and places to be appointed by you for that purpose, cause the said witness to come before you, and then and there examine him upon the said interrogatories and any cross-interrogatories (copies whereof are hereto annexed), on his corporal oath first taken before you upon the Holy Evangelists, or in such other solemn manner as is and may be authorized by law; and that you do take the answers of the witness to such interrogatories and reduce the same to writing, which shall be signed and sworn to by the said witness; and you shall certify under your hand and seal that the same was signed and sworn to by the said witness before you, and shall seal them up in an envelope, with the interrogatories and this commission, with your name across the seal, and indorse on the envelope the names of the parties to the suit and the name of the witness, and direct the package to the "Clerk of the circuit court of the United States, for the eastern district of Texas, Galveston, Texas;" if sent by mail, the postmaster or his deputy mailing the same shall indorse thereon that he received them from the hands of the officer before whom they were taken.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the eastern district of Texas, at Galveston, in said district, this 25th day of March, A. D. 1879, and of American Independence the 103d year.

[SEAL.]

C. DART,
Clerk U. S. Circuit Court, Eastern District of Texas, at Galveston,
By JAMES T. SPANN, *Dept.*

150 The foregoing commission endorsed as follows, to wit: "C. L. No. 1078. In U. S. circuit court, eastern district of Texas. Mary A. Nichols et al. vs. the Alabama Gold Life-Insurance Company. Commission. Issued 25th day of March, A. D. 1879. C. Dart, clerk, by James T. Spann, dep't."

UNITED STATES OF AMERICA,
Southern District of New York,
State of New York, City and County of New York:

By this public instrument be it known to all whom the same doth or may in anywise concern that I, Joseph B. Nones, a notary pub-
[SEAL.] lic, in and for the State of New York, by letters patent, under the great seal of the said State, duly commissioned and sworn, dwelling in the city of New York, do hereby certify that under and by virtue of several acts of Congress of the United States authorizing notaries public to take and certify oaths, affirmations, and acknowledgements in certain cases, thereby giving and granting to notaries public full powers and
151 authority to take depositions, and to do such other acts in relation to evidence to be used in the courts of the United States in the same manner and with the same effect as commissioners to take acknowledgements of bail and affidavits may now lawfully take and do, did call and cause to be and personally appear before me, at No. 239 Broadway, in the city of New York, in the county and State aforesaid, George F. Sniffen, a witness of sound mind and memory and lawful age (as stated in the annexed testimony of said witness for the defendant), in a civil suit now depending in the circuit court of the United States for the eastern district of Texas, wherein Mary A. Nichols et al. are plaintiffs and the Alabama Gold Life-Insurance Company is defendant, and the said witness, being by me first carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did then carefully examine the said witness, who did thereupon depose and testify as follows, as by the annexed deposition will appear:

Preliminary int. What is your name, age, occupation, and residence?

Ans'r. My name is Geo. F. Sniffen; I am 55 years of age; am secretary of the Knickerbocker Life-Ins. Co. of New York, and reside at No. 145 Rodney street, Brooklyn, N. Y.

Int. 1st. Do you know of the application of Charles Nichols, of Galveston, Texas, to the Knickerbocker Life-Insurance Company, for
152 life-insurance? If yea, state your official connection with the said company, and the facts which enable you to know of said application.

Ans'r. I am secretary of said company, and the records thereof indicate that Charles Nichols, of Galveston, Texas, made application to said company for insurance on or about the 11th day of May, A. D. 1870.

Int. 2d. Do you know of the acceptance or rejection of said Charles Nichols as a risk upon said application? If yea, state what you know upon the subject.

Ans'r. The books and records of this company show that the application of said Charles Nichols was disapproved by the company's consulting physician at New Orleans, and the risk declined.

Int. 3d. Are you acquainted with the books of said Knickerbocker Life-Insurance Company? If yea, state if they are correctly kept, and state if they were correctly kept at the time said application was made.

Ans. I am acquainted with the books of said company; they are correctly kept, and were correctly kept at the time said application was made.

Int. 4th. If you have answered in response to the foregoing interrogatories that the said Charles Nichols made application to said company for insurance upon his life, state the date of the same.

Ans'r. The application bears date May 11th, 1870.

153 Int. 5th. If you have stated that said risk was rejected or declined, state the reasons therefor.

Ans'r. I do not know why said risk was declined.

(Signed) GEO. F. SNIFFEN.

Cross-examination.

X-int. 1st. If you say you know of the application of Charles Nichols, of Galveston, to the Knickerbocker Life-Insurance Company, on his life, then please state whether said application was in writing or verbal, and your means of knowledge?

Ans'r. It was in writing; I know this from the fact that among the records of this company I find a copy of said application.

X-int. 2d. If you say you know of the acceptance or rejection of the said Charles Nichols, then say whether said rejection or acceptance was in writing or otherwise, and your means of knowledge.

Ans'r. Said rejection was in writing, and my knowledge thereof is obtained from the indorsement on said application.

X-int. 3d. If you say that the said application was in writing or that the said rejection or acceptance was in writing, then please attach to your answers herein the said original application, and attach also the original of said rejection or acceptance of risk.

Ans'r. I cannot attach the originals of said application or rejection, because they were forwarded to this court attached to the examination of President Nichols in this action; but Exhibit A hereto annexed are true and exact copies of the same.

154 X-int. 4th. If, in answering the 5th direct interrogatory, you state that any reason was ever assigned or given therefor, state by whom and by what authority was such reason given, to whom was it given, and when; was it in writing or verbal. If in writing, attach the same hereto connected with your deposition.

Ans'r. As stated in my answer to said interrogatory, I do not know why said risk was declined. It appears from the records of this company that the consulting physician thereof at New Orleans disapproved the risk.

X-int. 5th. How long have you been in the employ of the Knickerbocker Life-Insurance Company, and in what capacity?

Ans'r. I have been the secretary of said company for 19 years last past.

X-int. 6th. Were you ever at any time acquainted with Charles Nichols? If so, when and where, and how long?

Ans'r. I was never acquainted with Charles Nichols.

X-int. 7th. Do you know anything about him or any application of his for insurance on his life of your own personal knowledge, or if you say you knew of it, then say whether that knowledge was derived from Charles Nichols or the hearsay of other persons.

Ans'r. I do not know anything about him or his application from personal knowledge; all my information about him and his application is derived from the records of the Knickerbocker Life-Ins. Co.

(Signed) GEO. F. SNIFFEN.

155 Subscribed and sworn to before me this 9th day of April, 1879, at the place aforesaid.

[SEAL.] J. B. NONES,

Notary Public, N. Y., & Ex-officio U. S. Commissioner,
No. 91 *Duane st., cor. Broadway.*

EXHIBIT A.—*J. B. Nones, Notary Public, N. Y.*

[*Knickerbocker Life-Insurance Company, No.* 161, *Broadway, N. Y.*]

The following particulars are required in full from persons proposing to affect assurance on lives in this company:
This applicant, Charles Nichols, of Galveston, Texas, proposes to insure the life of himself, who at present resides at Galveston, Texas, who is (relationship) himself, in the Knickerbocker Life Insurance Company to the amount of ($5,000) five thousad dollars.

1. A. Kind of policy (whether ordinary life, 10-year non-forfeiture, or endowment), payable in years. B. Premium, how payable (whether annual, semi-annual, or quarterly)? C. Whether all cash or one-third premium note.	A. Life. B. Annually. C. All cash.
2. A. Married or single. B. Date and place of birth.	A. Not married. B. 13 September, 1837, in Marshall County, Alabama.
3. Age nearest birthday.	32 years 8 mos.; office age, 33 years.
4. Occupation.	Merchant.
5. Whether now or formerly, when and how long, and to what degree, subject to or at all affected by, any of the following diseases and infirmities: Apoplexy, asthma, bilious affection, bronchitis, consumption, coughs prolonged, disease of the brain, disease of the heart, disease of the lungs, disease of the stomach, disorder of the bowels, disorder of the liver, disease of the bladder, disease of the kidneys, dropsy, diarrhœa, dysentery, dyspepsia, epilepsy, erysipelas, fistula, fits, gout, gravel, insanity, palpitation, palsy, piles, pleurisy, rheumatism, rupture, salt rheum, or any disease of the skin, scrofula, stone or gravel, sore throat, spitting of blood, spinal complaint, vertigo, yellow fever.	I am not subject to any of the diseases, except to such bilious complaints as is usual in Texas.
6. A. Has the party been afflicted during the last seven years with any severe or constitutional disease? B. If so, with what?	A. No. B.
7. A. Is the party now diseased? B. If so, with what?	A. No. B.
8. Has the party ever had any serious injury?	No.

9. A. Has the party been vaccinated? B. Has he had the small-pox; if so, when? C. Are you aware of any fact not stated above tending to impair the health or shorten the life of the party?	A. Yes. B. No. C. No.
10. Which parent does the party most resemble? Whom does he take after?	Father, I suppose.
11. Has either of the parents, brothers, or sisters or near relatives of the party been afflicted with consumption, spitting of blood, rheumatism, gout, insanity, scrofula, cancer, or any other disease that tends to shorten life; and, if so, with what and when?	Two sisters and one brother died, it is said, of consumption.

157	Dead.	Age at death.	Of what disease.	How long sick.
12. Has the party lost either father, mother, sister, or brother; if so, at what age did death occur and what was the disease or cause. Of what disease and how long sick. (Full particulars.)	Father, yes. Mother, yes. 2 brothers. 3 sisters.	Year, 1849; age, about 50. 1863 or '4; about 46 1855, 1867; 30, 33. 1860, 1863, 1855; don't know; 30, 18.	Pneumonia. Don't know; Chronic diarrhœa, consumption. Child birth, consumption.	About 2 weeks. Confined only a short time. Long time; 2 weeks confined. Suddenly; don't know, sick long time.

	Living.	Age.	State of health (full particulars).
13. If any of the above are living, give their ages and state of health.	Father, no. Mother, no. One brothers. One sisters.	 21. 28.	 Good. Good.

14. Name and residence of the party's usual medical attendant, or (if he have none) of some other medical person, to be referred to for information as to his health.	Dr. T. J. Haley, Galveston, Texas.
15. Name and residence of an intimate friend to be referred to for similar information if necessary.	John Howard, Galveston, Texas.
16. A. Has any application been made to this company or any other company? B. Was it accepted, declined, or withdrawn? C. If declined or withdrawn, for what reason? D. If any insurance on party's life, state name of company and amount; if this company, state number of policy.	A. No. B. C. D.

And I do hereby agree that in the above proposal for assurance all the restrictions in the policy based on this application shall be binding on me, and shall be the basis and form part of the contract or policy between me and the said company, and that if any fraudulent or untrue allegation, mi-representation, or concealment as to my health or habits be contained in the proposal, all moneys which shall or may be paid on account of such assurance or dividends due shall be forfeited to the said company and the policy be void.

*And hereby declare that have an interest in the life of the said to the full amount of $

And it is further agreed that any insurance based on this application shall not be binding until the policy is actually delivered by the company and the premium paid thereon. And the omission to pay at maturity any premium or note given for premium upon the policy based on this application shall then and thereafter cause the policy to be void without notice to any party or parties interested therein. Also, in case of lo s, all unpaid notes given, either by me or by others, for the premium or other indebtedness due by the assured to the company may be deducted from the sum insured, and where the payments made are less than the nnual premium the balance of premium unpaid for the current year may be deducted.

Dated at Galveston, Texas this 11th day of May, 1870.

(Signed) CHARLES NICHOLS.

Witness:

(Signed) W. T. COLEMAN, *Ag't.*

☞ A party insuring for their benefit the life of another party must sign the application themselves, or the party whose life is insured must sign for them. For example, if Mrs. Sarah Smith insures the life of her husband, John Smith, she may sign "Sarah Smith," or her husband can sign "Sarah Smith, by John Smith."

158 KNICKERBOCKER LIFE-INSURANCE COMPANY OF THE CITY OF NEW YORK.

Medical examination certificate.

☞ NOTE.—In any case where the risk seems to the examining physician a safe one, but where family history or individual record develops points of possible doubt, a letter giving full reasons for his recommendation should invariably accompany this certificate.

The examining physician should bear in mind that the company relies almost entirely upon his statements in deciding whether to accept or decline the risk.

The company desires that an examiner should not only answer the questions herein asked, but his opinion of the risk is also required, either in this certificate or in a communication to the company.

This certificate should give a complete medical description of the applicant, so that the company's consulting physician may judge of the safety of the risk.

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*Strike out this sentence if the insurance is proposed on your own life.

Normal weight corresponding to height.

Ft.	In.	Lbs.
5	0	110
5	1	115
5	2	120
5	3	124
5	4	127
5	5	132
5	6	137
5	7	142.
5	8	148
5	9	154
5	10	160
5	11	167
6	0	175

Increasing above 6 feet 9 lbs. to inch.

Table showing the expectation of life at every age, according to the observations made at Carlisle.

Age.	Expect'n.
10	48. 82
11	48. 04
12	47. 27
13	46. 51
14	45. 75
15	45. 00
16	44 27
17	43. 57
18	42. 87
19	42. 17
20	41. 46
159] 21	40. 75

Name of party examined (to be written by party examined). Do you believe h to be the party on whose life the accompanying application is made? (The examining physician is requested to satisfy himself in all cases as to the identity of the party being examined; likewise to read the application to the party, and enquire if the answers therein are correct.)	Name, Charles Nichols. Answer: I know him to be.
1. Height and weight. Color of eyes and hair. Complexion. General appearance. Size of chest, carefully measured around nipples, under the vest. Is the expansion of the chest equal? Size around the waist?	Height, 6 feet in.; weight, 145 lbs. Eyes, black; hair, dark. Florid. Healthy. Ordinary measure, 34 in.; chest inflated, 36½ in. Yes. 29 inches.
2. Is there now existent any disease of the head, external or internal, or any predisposition thereto; any paralysis, vertigo, or tremors or cramps in any part of the system, or any nervous affection of any sort; any disease of the throat or trachea; any cough, occasional or habitual; any profuse expectoration; any spitting of blood; any difficulty in breathing; any palpitation of the heart; any disease of kidneys or bladder; any injury to the system in any way by syphilis or gonorrhœa; any cutaneous eruption on any part of the body; any predisposition to rheumatism or gout, acute or chronic, or to any arthritic disease; or any signs of disease of any sort not included in this list of questions?	No.
3. Has the party any surgical or other disease which might eventually make an operation needful?	No.
4. Has the party any apparent tendency, from any cause, to hereditary disease?	See application, his general appearance, & free from appearance of disease.
5. On a critital examination of the lungs an dheart, do you find them perfectly healthy, or predisposed to disease?	State of lungs, healthy; condition of heart, healthy; & respirations per minute, No., 18; character of same, full & free.
6. Rate and other qualities of the pulse.	Rate, 72; quality, regular & full.

22	40.04			
23	39.31			
24	38.59	7. Is there any tendency to obesity?	Tendency to obesity? No. Is there any arcus senilis? No.	
25	37.86			
26	37.14			
27	36.41			
28	35.69			
29	35.00			
30	34.24	8. Is the party considered acclimated?	Has been frequently exposed to yellow fever, but never affected.	
31	33.68			
32	33.03			
33	32.36			
34	31.68			
35	31.00	9. Is the party now, and has he always been, of temperate habits and appearance?	Yes.	
36	30.32			
37	29.64			
38	28.95			
39	28.28			
40	27.61	10. If a female, is she pregnant?		If the knowledge of this is not obtained by a personal examination a certificate of uterine health from family physician is necessary.
41	26.97	Has, or has she had, any uterine disease?		
42	26.34	Has, or has she had, any menstrual disturbance?		
43	25.71	Has she ever had a miscarriage? How often?		
44	25.09	Have her labors been natural and easy? How many?		Female lives not taken on ordinary life plan.
45	24.46			
46	23.82			
47	23.17			
48	22.50			
49	21.81			
50	21.11	11. Have you read the application to the party?	Yes.	Consulting physician's remarks.
51	20.39	Does he state that the answers therein are correct?	Yes.	
52	19.68			
53	18.97			
54	18.28			
55	17.58	12. Have you verified by detailed investigation the record as given in the application?	Yes.	
56	16.89			
57	16.21			
58	15.55			
59	14.92			
60	14.34	13. Have you ascertained to your own satisfaction the existence or non-existence of each and every disease mentioned or suggested in both application and certificate?	Yes.	
61	13.82			
62	13.31			
63	12.81			
64	12.30			
65	11.79	14. Give a clear and full opinion of the risk, and state (yes or no) whether you recommend its acceptance or not?	Character of risk, good. Do you recommend its acceptance? Yes.	
66	11.27			
67	10.75			
68	10.23			
69	9.70			

Examined at Galveston, Texas, this 11th day of May, 1870.

(Signed) JOHN M. HADEN, *M. D.*

160 The foregoing Exhibit A endorsed as follows, to wit: Application No. 2069. Knickerbocker Life-Insurance Company, Proposer, Chas. Nichols. Relationship, life of himself. Residence, Galveston. Kind of policy, life. Age, 33. Dated 11th day of May, 1870. Amount insured, $5,000; annual premium, $; policy & stamp, $. Agent, H. C. Paxson, Mgr. Disapproved. (Signed) Joseph T. Scott, M. D. Edition of March, 1871. Agents will please not fill up these blanks.

(Across the face in red ink:) Copy.

(Across the face in black ink:) Declined.

161 UNITED STATES OF AMERICA,
Southern District of New York,
State of New York, City and County of New York, ss:

By this public instrument be it known to all whom the same doth or may in anywise concern that I, Joseph B. Nones, a notary public in and for the State of New York, by letters patent, under [SEAL.] the great seal of the said State, duly commissioned and sworn, dwelling in the city of New York, do hereby certify that under and by virtue of several acts of Congress of the United States, authorizing notaries public to take and certify oaths, affirmations, and acknowledgements, in certain cases, thereby giving and granting to notaries public full powers and authority to take depositions and do such other acts in relation to evidence to be used in the courts of the United States in the same manner and with the same effect as commissioners to take acknowledgements of bail and affidavits may now lawfully take and do, do certify that the reason for taking the foregoing deposition of the said witness, George F. Sniffen, is that the same is necessary for the defendant in the said civil suit in the caption mentioned, which said caption is strictly true, and that the said witness lives in Brooklyn City, Kings County, and State of New York, more than one hundred miles from Galveston, State of Texas, the place of trial of said civil suit.

162 I further certify that no notification was given by me to the adverse party to be present at the taking of said deposition, and put interrogatories, if they should think fit, and that neither the said adverse party, nor any attorney of residing or being within one hundred miles of the city of Galveston, aforesaid, at the time of taking said deposition, nor within any other distance.

I further certify that on the date hereof I was attended by the said witness at No. 239 Broadway, New York City, aforesaid; that the said witness, George F. Sniffen, was first carefully examined and cautioned; and duly sworn by me to testify the truth, the whole truth, and nothing but the truth, and that the preceding deposition of said witness, George F. Sniffen, was by me reduced to writing and after being carefully read over to and approved by said witness, George F. Sniffen, subscribed the same in my presence, as the same appears, and I have retained the said deposition in my possession without alteration, for the purpose of sealing up and directing the same, with this certificate of the reasons aforesaid for taking said deposition, with my own hand, to the court for which the same was taken.

I further certify that I am not of kin or of counsel or attorney to any

one of the parties in said civil suit or in any way interested in the event thereof.

Given under my hand and seal of office this ninth day of April,
163 1879, in the 103d year of the Independence of the United States.

[SEAL.] J. B. NONES,
Ex-officio U. S. Commissioner and Notary Public, N. Y.,
No. 91 Duane Street, cor. Broadway.

Fees $12, including services out of office & postage; paid by defendant.
$12.00.] J. B. NONES,
N. Pub., N. Y.

The foregoing deposition endorsed as follows, to wit: "Publication made July 17, 1879, by agreement of counsel in writing, and filed, at request of C. L. Cleveland, of counsel for plaintiffs. C. Dart, clerk. Filed July 17, 1879. C. Dart, clerk."

The envelope containing the foregoing deposition endorsed as follows, to wit: "United States of America, U. S. circuit court, eastern district of Texas, at Galveston, Texas. Mary A. Nichols et al. vs. Alabama Gold Life-Ins. Co. No. 1078. Examination of Geo. F. Sniffen, a wit-
164 ness on behalf of def't., taken before me on 9th April, 1879, at New York City, by virtue of enclosed authority. J. B. Nones, notary public N. Y., 91 Duane st. C. Dart, esqr., clerk of the U. S. circuit court, eastern district of Texas, Galveston, Texas. Taken and mailed by me at New York City, 10th day of April, 1879. J. B. Nones, N. public, N. Y. Rec'd, New York, April 10th, 1879, from Joseph B. Nones, this package, to be sent hence to its destination by U. S. mail, he being the notary public within named. N. C. Causon, ass't p. m. Received from the post-office at Galveston, Texas, April 16, '79. C. Dart, clerk, by James T. Spann, dept. Filed April 16, 1879. C. Dart, clerk, by James T. Spann, dept. Publication made July 17, 1879, by agreement of counsel in writing. Filed at request of C. L. Cleveland, of counsel for p'ffs. C. Dart, clerk."

(Across the seal thus:) "J. B. Nones, N. pub., N. Y. J. B. Nones, N. pub., N. Y."

165 *Depositions of P. M. Bush and Jas. M. Donald.—Filed May 10th,* 1879.

Circuit court U. S., eastern dist. of Texas.

MARY A. NICHOLS ET AL.
vs.
ALABAMA GOLD LIFE-INSURANCE COMPANY.

To Mess. Willie & Cleveland, att'ys of record for plaintiffs, or the plaintiffs in said case:

You will please take notice that five days after the service upon you of a copy of the following interrogatories we will apply to the clerk of the circuit court of the United States, eastern district of Texas, for a commission to take the depositions of Percival M. Bush and James McDonald,

witnesses for the defendant in above-entitled case, and residents of the State of Alabama, Marshall County.

WAUL & WALKER,
Att'ys for Def't.

Interrogatories to be propounded to Percival M. Bush and James McDonald.

Int. 1st. What is your occupation or profession; how long have you practiced it, and where do you reside?

Int. 2d. Do you know the family or have you ever known the family, or any members thereof, of Charles Nichols, formerly of Alabama?

Int. 3d. If you have answered that you have been acquainted with the family of Charles Nichols, state where and when you knew them; and state what relationship they bore to him.

166 Int. 4th. Do you know anything of any pulmonary disease with which any of the relatives of said Charles Nichols sufferred during your acquaintance with the family? If yea, state the name of such relative of said Nichols so afflicted, and state the date of such affliction, and state the relation he or she bore to said Charles Nichols?

Int. 5th. Do you know of the death of any member of the family to which said Charles Nichols belonged? If so, state if within your knowledge, as well as you may recollect, the date of death, and the nature and name of the disease causing such death, and state the name of such relative of Charles Nichols, and the relationship to said Charles Nichols.

WAUL & WALKER,
Att'ys for Def't.

The foregoing interrogatories endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. Ala. Gold Life-Ins. Co. Interrogatories to Percival M. Bush & James McDonald. Filed March 28, 1879. C. Dart, clerk, by James T. Spann, dept."

In circuit court for eastern district of Texas.

MARY A. NICHOLS ET AL.
vs.
ALABAMA GOLD LIFE-INSURANCE COMPANY.

Cross-interrogatories to be propounded to Percival M. Bush and
167 James McDonald, witnesses for the defendant in this cause.

X-int. 1. This is a suit brought by Mrs. Mary A. Nichols in her own behalf, as the widow of Charles Nichols, and in behalf of her minor children for whom she is guardian, to recover the amount of five thousand on a policy of insurance issued by the Alabama Gold Life-Insurance Company on the life of Charles Nichols, now deceased. Please state if you have any interest, and what, in the subject-matter of this suit.

X-int. 2. If, in answering any of the plaintiffs' interrogatories, you have stated anything not within your personal knowledge, but derived from information given to you by others, then please say in answering this what portion or portions you have stated on your own personal knowledge and what from information, and distinguish the same particularly.

X-int. 3. State anything known to you in regard to this suit which will be of benefit to Mrs. Nichols and children, plaintiffs, as if specially interrogated.

WILLIE & CLEVELAND,
Att'ys for Pl'ffs.

Endorsed thus: "Filed Ap'l 12, 1879. C. Dart, clerk."

168 I. C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, in the fifth circuit and district aforesaid, do hereby certify the foregoing to be a true and correct copy of the direct & X-interrogatories propounded to Percival M. Bush and James McDonald, in cause No. 1078, on the law docket of said court, entitled Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company, as the same now appears on file, in my office.

To certify which witness my hand and the seal of said court, at Galveston, in said district, this the 12th day of April, A. D. 1879.

[SEAL.] C. DART,
Clerk U. S. Circuit Court, E. D. T., at Galveston.
By JAMES T. SPANN, *Deputy.*

169 UNITED STATES OF AMERICA,
Eastern District of Texas:

In U. S. circuit court, at Galveston.

The President of the United States of America to Rufus K. Boyd, of Marshal County, Alabama, or Thomas C. Burday, of Madison County, Alabama, or either of you, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you, or either of you, and by these presents do give unto you full power and authority diligently to examine Percival M. Bush and James McDonald, each apart and separate from the other, upon certain interrogatories propounded to them in a cause wherein Mary A. Nichols & others are plaintiffs and the Alabama Gold Life-Insurance Company is defendant, now pending in the circuit court of the United States for the eastern district of Texas, in the fifth circuit, and therefore we command that you, at certain days and places to be appointed by you for that purpose, cause the said witnesses to come before you, and then and there examine them and each of them upon the said interrogatories and any cross-interrogatories (copies whereof are hereto annexed), on their several corporal oath first taken before you upon the Holy Evangelists, or in such other solemn manner as is and may be authorized by law; and that you do take the answers of the witnesses to such interrogatories and reduce the same to writing, which shall be signed and sworn to by the said witnesses; and you shall certify under your hand and seal that the same was signed and sworn to by the said witnesses, before you, and shall seal them up in an envelope, with the interrogatories and this commission, with your name across the seal, and indorse on the envelope the names of the parties to the suit and the names of the witnesses, and direct the package to the "clerk of the circuit court of the United States for the eastern district of Texas, Galveston, Texas;" if sent by mail, the postmaster or his

deputy mailing the same shall indorse thereon that he received them from the hands of the officer before whom they were taken.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the eastern district of Texas, at Galveston, in said district, this 12th day of April, A. D. 1879, and of American Independence the 103d year.

[SEAL.]

C. DART,
Clerk U. S. Circuit Court, Eastern District of Texas, at Galveston.
By JAMES T. SPANN, *Dept.*

170 The foregoing commission endorsed as follows, to wit: "C. L. No. 1078. In U. S. circuit court, eastern district of Texas. Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company. Commission. Issued 12th day of April, A. D. 1879. C. Dart, clerk, by James T. Spann, dep't."

Be it remembered that on this day, the second day of May, in the year of our Lord one thousand eight hundred and seventy-nine, I, Rufus K. Boyd, of Marshall County, State of Alabama, a commissioner duly appointed by the circuit court of the United States for the eastern district of Texas, in the fifth circuit, under and by virtue of the acts of Congress, in that behalf made and provided, and qualified under the laws of the United States to take depositions for use in the courts of the United States, did call and cause to be and personally appear before me, at my office in the town of Guntersville, in the county of Marshall, State of Alabama, Percival M. Bush, to testify and the truth on the part and behalf of the defendants in a certain suit or matter of controversy now pend-
171 ing and undetermined in the circuit court of the United States for the eastern district of Texas, at Galveston, in the district aforesaid, wherein Mary A. Nichols & others are plaintiffs and the Alabama Gold Life-Insurance Company is defendant, now pending in the said circuit court.

And the said PERCIVAL M. BUSH, of Marshall County, State of Alabama, being about the age of seventy years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Percival M. Bush, and he did thereupon depose, testify, and say as follows, viz:

To the 1st interrogatory he answers and says: I am a practitioner of medicine, and have been a practicing physician for thirty or thirty-five years, and reside in Marshall County, State of Alabama.

To the 2d interrogatory he answers & says: Yes: I knew all of the family of Charles Nichols, who formerly, with his father's family, lived in Alabama.

To the 3d interrogatory he answers and says: I knew them in Marshall County, Alabama, and was acquainted with and knew the father and mother of said Charles Nichols before they were married. I have known the family, as well as I can remember, since 1830 or 1831, and up to the time when they removed from the State of Alabama. The relationship

which they bore to Charles Nichols was that of father, mother, & child, and brothers and sisters.

172 To the fourth interrogatory he answers and says: Yes; several of the children of Simeon Nichols, who was the father of said Charles, suffered with pulmonary affection or disease, and one of the family, a brother of said Charles, died with consumption, in this county, but I cannot remember the period of his death. Sarah Nichols and Lizzie, who were sisters of said Charles, suffered with pulmonary disease, which, as I remember, first exhibited or developed its presence in the changing period of girlhood to womanhood, or I will express it by the time they respectively reached the ages of fifteen or sixteen years. The family was consumptive, and it is difficult for me to remember the names of the children, and the names may be confounded by me—Sarah & Lizzie, sisters of Charles; James, a brother, who died. There was another sister also, and I am not sure whether her name was Lettie or Hettie, but I think her name was Hettie, who, at about the age of seventeen, developed the existence of consumption. I cannot fix the date of the death of James Nichols, but my best belief is that he died in 1843 or 1844. I cannot definitely fix the date of my observation of the existence of pulmonary disease in the children of said family, and can only approximate by reference to my settlement in this county in the year 1831. These persons would become afflicted with consumption in its incipient stages at various times. The girls upon about the ages of fifteen to seventeen, and

173 the boys from nineteen to twenty.

To the fifth interrogatory he answers and says: Yes; I cannot more definitely fix the period of the death of James Nichols, who was a brother of said Charles Nichols, than I have in my answer to the fourth interrogatory. The nature of the disease with which James Nichols died was pulmonary consumption. So also was the nature and character of the disease which afflicted the other members of said family whose names I have heretofore given, as near as I can remember them.

(Signed) P. M. BUSH.

Sworn to and subscribed before me this the 2d day of May, anno Domini 1879.

RUFUS K. BOYD,
U. S. Commissioner.

Cross-examination.

To the 1st cross-interrogatory the said Percival M. Bush answers and says: I have no interest in the suit mentioned in the interrogatory.

To the 2d interrogatory he answers and says: I have stated nothing but what I knew of my own personal knowledge and observation as a neighbor and physician, living near to and acquainted with the children of the family from their birth, and with their parents before their intermarriage.

174 To the third interrogatory he answers and says: I do not know of anything more than I have stated in my answers to the interrogatories-in-chief and in my answers hereto.

(Signed) P. M. BUSH.

Sworn to and subscribed before me this the 2d day of May, anno Domini, 1879.

RUFUS K. BOYD.
U. S. Commissioner.

I, Rufus K. Boyd, of the county of Marshall, State of Alabama, a commissioner duly appointed by the circuit court of the United States for the eastern district of Texas, in the fifth circuit, under and by virtue of the acts of Congress in that behalf made and provided, and qualified under the laws of the United States to take depositions for use in the courts of the United States, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the testimony of said witness is material and necessary for the defendant in this cause in the caption of the said deposition named, and that said witness, Percival M. Bush, was duly summoned to appear before me at my office, in the town of Guntersville, State of Alabama, Marshall County, on the second day of May, A. D. 1879, and was then and there examined upon the said interrogatories and cross-interrogatories after first being by me duly sworn according to law.

175 I further certify that on the 2d day of May, A. D. 1879, I was attended at my office in the town of Guntersville, county of Marshal, and State of Alabama, by Percival M. Bush duly summoned by me as a witness in the above-entitled cause, and the said witness, who was of sound mind and lawful age, was by me carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from his statements and after carefully reading the same to the witness, he subscri'ed the same in my presence.

I have retained the said deposition in my possession for the purpose of sealing up and directing the same with this certificate of the reasons aforesaid for taking said depositions, with my own hand, to the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in said caption.

In testimony whereof I have hereunto set my hand and seal this the second day of May, in the year of Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the 103d year.

RUFUS K. BOYD,
U. S. Commissioner.

176 Be it remembered that on this day, the thirtieth day of April, in the year of our Lord one thousand eight hundred and seventy-nine, I, Rufus K. Boyd, of Marshall County, State of Alabama, a commissioner duly appointed by the circuit court of the United States for the eastern district of Texas, in the fifth circuit, under and by virtue of the acts of Congress in that behalf made and provided, and qualified under the laws of the United States, did call and cause to be and personally appear before me, at my office, in the town of Guntersville, in the county of Marshall, State of Alabama, James McDonald, to testify and the truth to say on the part and behalf of the defendant, in a certain suit or matter of controversy now pending and undetermined in the circuit court of the United States for the eastern district of Texas, at Galveston, in the district

aforesaid, wherein Mary A. Nichols and others are plaintiffs, and the Alabama Gold Life-Insurance Company is defendant, now pending in the said circuit court; and the said James McDonald, of Marshall County, State of Alabama, being about the age of seventy-one years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said James McDonald, and he did thereupon depose, testify, and say as follows, viz:

To the first interrogatory he answers and says: I am a farmer,
177 all my life, and reside near Henryville, in Marshall County, State of Alabama.

To the second interrogatory he answers and says: Yes; I know his parents, brothers, and sisters, and knew Charles Nichols.

To the third interrogatory he answers and says: I knew his father and mother before they were married, and knew the family of said marriage up to the time they removed from Alabama; I cannot recollect when they left the State, so as to fix the time as to when I knew them. I knew them from some time in 1830 or 1831, up to the time they removed away. The relationship to Charles was that of parents to child & brothers & sisters.

To the fourth interrogatory he says: James Nichols, who was a brother of Charles Nichols, died in Claysville, after the death of his father, with consumption. I lived near Claysville, in Marshall County, Alabama, and a neighbor to said Nichols family. They were weakly people, but I cannot state as to any others of said family of said Charles Nichols from my own personal knowledge. The said James became the administrator of the estate of his father, and died with consumption before he had finally administered, and a few years thereafter the surviving members of said family removed from this State. I cannot fix more definitely the date of the *the* death of James Nichols.

To the 5th interrogatory he says: Yes; I cannot state the date of the death of James Nichols more definitely than I have stated in response to the fourth interrogatory. The nature and name of the disease was
178 a pulmonary or lung disease, and called consumption, with which James Nichols, who was a brother of Charles Nichols, died as I have here before stated.

(Signed) JAMES McDONALD.

Sworn to and subscribed before me this the 30th day of April, 1879.

RUFUS K. BOYD,
U. S. Commissioner.

Answers to cross-interrogatories.

To the 1st cross-interrogatory he says: I have no interest whatever in the suit mentioned in said interrogatory.

To the 2d interrogatory he says: I have stated nothing in answer to plaintiffs' interrogatories except from my own knowledge. I know James Nichols well, and saw him frequently and observed his sufferings, which finally terminated in his death, and my statement as to the character of the disease from which he died is based upon my personal knowledge and observation of his suffering and death.

To the 3d cross-interrogatory he says: I know nothing more than I

have stated in the answers to the interrogatories-in-chief and to these cross-interrogatories.

(Signed) JAMES McDONALD.

179 Sworn to and subscribed before me this the 30th day of April, 1879.

RUFUS K. BOYD,
U. S. Commissioner.

I, Rufus K. Boyd, of the county of Marshall, State of Alabama, a commissioner duly appointed by the circuit court of the United States for the eastern district of Texas, in the fifth circuit, under and by virtue of the acts of Congress in that behalf made and provided, and qualified under the laws of the United States to take depositions for use in the courts of the United States, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the testimony of said witness is material and necessary for the defendant in the cause in the caption of said deposition named, and that the said witness, James McDonald, being duly summoned to appear before me, at my office, in the town of Guntersville, in Marshall County, State of Alabama, on the thirtieth day of April, A. D. 1879, was then and there examined upon the said interrogatories and cross-interrogatories, after being by me first duly sworn according to law.

I further certify that on the thirtieth day of April, A. D. 1879, the said witness, the said James McDonald, who was of sound mind and lawful age, was by me carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the depo-
180 sition was by me reduced to writing in the presence of the witness and from his statements, and, after carefully reading the same to the witness, he subscribed the same in my presence.

I have retaind the said deposition in my possession for the purpose of sealing up and directing the same with this certificate of the reasons aforesaid for taking said deposition, with my own hand, to the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in said caption.

In testimony whereof I have hereunto set my hand and seal this thirtieth day of April, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the 103d year.

RUFUS K. BOYD,
U. S. Commissioner.

The foregoing deposition endorsed as follows, to wit: "Publication made July 17, '79, by agreement of counsel in writing, and filed at request of C. L. Cleveland, of counsel for plaintiffs. C. Dart, clerk. Filed July 17, 1879. C. Dart, clerk."

181 The envelope containing the foregoing deposition endorsed as follows, to wit: "C. L. 1078. Mary A. Nichols et als. vs. Alabama Gold Life-Insurance Company. Circuit court of the United States, eastern district of Texas. Names of witnesses examined: James Mc-

Donald, Perceival M. Bush. Clerk of the circuit court of the United States for the eastern district of Texas, Galveston, Texas. Rec'd from the hands of Rufus K. Boyd in good condition. W. J. Beat, P. M. Received this package from the post-office at Galveston, Texas, in good order & condition, and filed same this 11th day of May, A. D. 1879. C. Dart, clerk, by Geo. C. Rives, dept. Publication made July 17, 1879, by agreement of counsel in writing, & filed at request of C. L. Cleveland, of counsel for plaintiffs. C. Dart, clerk."

(Across the seal thus:) "Rufus K. Boyd, Rufus K. Boyd, Rufus K. Boyd."

182 *Deposition of James McCorkle.—Filed May 20th,* 1879.

MARY A. NICHOLS ET AL.
vs.
ALA. GOLD LIFE-INS. CO.

Suit pending in circ't court U. S., eastern dist. of Texas.

Mess. WILLIE & CLEVELAND,
Att'ys of Record for Plaintiffs:

You will please take notice that after five days after the service of a copy of the following interrogatories upon you we will apply to the clerk of the circuit court of the United States for the eastern district of Texas for a commission to take the answers to said interrogatories of James McCorkle, a resident of Marshall County, Alabama, a witness for the defendant in above-styled cause.

Interrogatories to be propounded to James McCorkle.

Int. 1st. What is your profession, and how long have you practiced it?

Int. 2d. Were you acquainted with Charles Nichols, formerly of Marshall County, Alabama, and his family; if so, when?

Int. 3d. Do you know anything of any member or member' of the family or any near relative of Charles Nichols being afflicted at any time with any pulmonary disease? If so, state the name or names of such relative, the relationship to Charles Nichols, and the time of such affliction, as near as you may be able.

Int. 4th. Do you know of the death of any of the brothers or
183 sisters of said Charles Nichols? If so, state, if within your knowledge, the name or names of such persons deceased, the relationship to said Charles Nichols, and the time, as near as you may be able, when such relative of Charles Nichols died.

Int. 5th. If you state that you know of the death of any relative of Charles Nichols, state of what disease he, she, or they died, and, as near as you may be able, the date of death.

WAUL & WALKER,
Att'ys for Def't.

Cross-interrogatories to be propounded to James McCorkle, the witness named in the foregoing notice.

X. 1. This is a suit pending in the U. S. circuit court for the eastern

district, in which the plaintiffs seek to recover the amount of a policy of insurance upon the life of one Charles Nichols, deceased, issued by the defendant company. Have you not testified by deposition before Jno. D. Taylor, a notary public, heretofore in this cause?

X. 2. Are your answers heretofore given in the deposition referred to in any respect different from those now given; and, if so, in what respect?

X-int. 3. If in answering any of the questions propounded by the defendant herein you have stated anything upon hearsay, or upon information derived from others, please distinguish the same, and specify in your reply hereto what you have answered of your own knowledge and
184 what upon information from others, and what as matter of opinion.

X. 4. Are you acquainted with John D. Taylor, notary public of Marshall County, Alabama? If so, please state whether he is absent from his place of abode or not; is he sick or in any way incapacitated from performing the ordinary and usual duties pertaining to his office as notary public; and, if so, for how long has such inability existed?

WILLIE & CLEVELAND,
Att'ys for Pl'ffs.

The foregoing direct and cross interrogatories, endorsed: "C. L. 1078. Mary A. Nichols et al. vs. Alabama Gold Life-Insurance Co. Interrogatories and cross-int'g's to James McCorkle. Filed April 15th, '79. C. Dart, clerk."

185 I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, in the fifth circuit and district aforesaid, do hereby certify the foregoing to be a true and correct copy of the interrogatories and cross-interrogatories propounded to the witness James McCorkle in cause No. 1078, on the law docket of said court, entitled Mary A. Nichols et al. vs. Alabama Gold Life-Insurance Co., as the same now appears on file in my office.

To certify which witness my hand and the seal of said court at Galveston, in said district, this the 16th day of April, A. D. 1879.

[SEAL.] C. DART,
Clerk U. S. Circuit Court, E. D. T., at Galveston.

186 UNITED STATES OF AMERICA,
Eastern District of Texas:

In U. S. circuit court at Galveston.

The President of the United States of America to Rufus K. Boyd, of Marshall County, Alabama, and Thomas C. Barclay, of Madison County, Alabama, special commissioners appointed by the court, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you, or either of you, and by these presents do give unto you full power and authority diligently to examine James McCorkle, a resident of Marshall County, Alabama, upon certain interrogatories propounded to him in a cause wherein Mary A. Nichols and others are plaintiffs and the Alabama Gold Life-Insurance Company is defendant, now pending in the circuit court of the United States for the eastern district of Texas, in

the fifth circuit, and therefore we command that you, at certain days and places to be appointed by you for that purpose, cause the said witness to come before you, and then and there examine him upon the said interrogatories and any cross-interrogatories (copies whereof are hereto annexed) on his corporal oath first taken before you upon the Holy Evangelists, or in such other solemn manner as is and may be authorized by law; and that you do take the answers of the witness to such interrogatories and reduce the same to writing, which shall be signed and sworn to by the said witness; and you shall certify under your hand and seal that the same was signed and sworn to by the said witness before you, and shall seal them up in an envelope with the interrogatories and this commission, with your name across the seal, and indorse on the envelope the names of the parties to the suit and the name of the witness, and direct the package to the "clerk of the circuit court of the United States for the eastern district of Texas, Galveston, Texas;" if sent by mail, the postmaster or his deputy mailing the same shall indorse thereon that he received them from the hands of the officer before whom they were taken.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the eastern district of Texas, at Galveston, in said district, this 16th day of April, A. D. 1879, and of American Independence the 103d year.

[SEAL.]

C. DART,
Clerk U. S. Circuit Court, Eastern District of Texas, at Galveston.

187 The foregoing commission endorsed as follows, to wit: "C. L. No. 1078. In U. S. circuit court, eastern district of Texas. Mary A. Nichols & others vs. Alabama Gold Life-Insurance Company. Commission. Issued 16th day of April, A. D. 1879. C. Dart, clerk."

Be it remembered that on this day, the tenth of May, in the year of our Lord one thousand eight hundred and seventy-nine, I, Rufus K. Boyd, a commissioner duly appointed by the circuit court of the United States for the eastern district of Texas, in the fifth circuit, under and by virtue of the acts of Congress in that behalf made and provided, and qualified under the laws of the United States, to take depositions for use in the courts of the United States, did call and cause to be and personally appear before me at my office in the town of Guntersville, county of Marshall, and State of Alabama, James C. McCorkle, a resident citizen of said county and State last mentioned, to testify and the truth to say on the part and behalf of the defendant in a certain suit or matter of controversy now pending and undetermined in the circuit court of the United States for the
188 eastern district of Texas, at Galveston, in the district, wherein Mary A. Nichols et al. are plaintiffs and Ala. Gold Life-Ins. Co. are defendant.

And the said JAMES MCCORKLE being about the age of fifty-six years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said James McCorkle, and he did thereupon depose, testify, and say as follows, to wit:

To the 1st interrogatory he answers & says: I am a physician and have been a practitioner of medicine about thirty-eight years.

To the 2d interrogatory he answers & says: Yes; in or about the years 1850 or 1851.

To the 3d interrogatory he answers & says: I know of the death of James Nichols, who was a brother of said Charles Nichols, and while it was stated that he died with consumption, I do not know this as a fact of my own personal*ly* knowledge. Said James died, according to best recollection, about the year 1854.

To the 4th interrogatory he answers and says: Yes, I know of the death of James Nichols, who was a brother of Charles Nichols. I give it as my best recollection that said James died some time in the year 1854.

To the 5th interrogatory he answers and says: My answer to the 3d interrogatory is the answer I make to this.

Cross-interrogatories.

189 To the 1st cross-interrogatory he answers and says: Yes; I testified before Jno. D. Taylor in this cause before.

To 2d cross-interrogatory he answers and says: In my answers to the direct interrogatories I have testified from my own personal knowledge in every instance, except as I have otherwise stated in said answers. I knew the Nichols family; knew James, Charles, the mother of James & Charles, and their other brother and sisters. The father was dead before I knew the family; as to James' death, I have only given the statement as to the nature of the disease which terminated his life. In that statement and belief it was also stated that his death was caused by a disease similar to that with which his father, Simeon Nichols, died. This is information derived at the time of his death, and impressed with its truth from my personal observation of James Nichols during my knowledge of him, although I was not the physician of the family.

To the 3d cross-interrogatory he says: I believe I have answered this interrogatory as fully as I can in my answer to the second cross-interrogatory.

To the 4th cross-interrogatory he answers and says: Yes; I am acquainted with Jno. D. Taylor, who now is a notary public & ex officio justice of the peace in and for Marshall County and State of Alabama. He is now here, and resides here in the town of Guntersville, in said county and State. He is not absent from his place of abode; he is not
190 sick, nor is he now in any way incapacitated to perform the ordinary duties appertaining to his office so far as I know or believe. Mr. Taylor has heretofore been acting as notary public and ex officio justice of the peace, until it was discovered that an error had been committed in the office of the secretary of state of the State of Alabama in the issuance of the commission to Mr. Taylor, under the appointment of the governor of the State. Mr. Taylor ceased acting as such notary public & ex officio justice of the peace upon the discovery of the error in said commission to which I have referred, until he could make application to the governor for his appointment again as notary public & ex officio justice of the peace. Under commission issued upon the appointment made by the governor, after discovery of mistake in issuance of his commission, Mr. Taylor is now acting, and not under the first, for the reasons stated. There are

two offices under the statute of this State; the one a notary public, and the other a notary public & ex officio justice of the peace. These officers are commissioned under the great seal of the State before they are authorized to perform any of the functions thereof. The commissions which are issued confer authority to perform the duties of the office to which they are appointed, and are descriptive of the office, and therefore Mr. Taylor declined any longer to act or perform the functions of either of said offices by reason of the error heretofore referred to until his commission
191 was made to conform to the office he was exercising, or his office conforms to his commission.

The new commission under which Mr. Taylor now acts, and issued on the 1st day of May, 1879, relates back and takes effect from the 29th day of October, 1877, the date of his first appointment by the governor of this State. His last commission is now in my hands and I am testifying from it. It is signed by R. W. Cobb, governor, and W. W. Screws sec. of state and authenticated by the great seal of the State. His first commission was issued by Gov. Houston.

I have answered thus fully, because in the interrogatory there seemed an intimation, covertly designed, that appeared to reflect upon Mr. Taylor or upon me, or upon some one else; hence I have gone fully into the details, and have examined the commission of Mr. Taylor and the statute of the State making it a penal offence to act without a commission, and is intended to answer the imputation in this interrogatory.

(Signed) JAMES McCORKLE.

Sworn to & subscribed before me this the 10th day of May, 1879.

RUFUS K. BOYD,
U. S. Commissioner.

I, Rufus K. Boyd, a commissioner duly appointed by the circuit court of the United States for the eastern district of Texas, in the fifth cir-
192 cuit, under and by virtue of the acts of Congress in that behalf made and provided, and qualified under the laws of the United States to take depositions for use in the courts of the United States, do hereby certify that the reason for taking the foregoing deposition is and the fact is that the testimony of the said witness is material and necessary for the defendant in the cause in the caption of the said deposition named, and that the said witness, James McCorkle, did depose, say, and testify as herein set forth. I further certify that on the 10th day of May, anno Domini 1879, I was attended at my office in the town of Guntersville, county of Marshall, State of Alabama, by the said James McCorkle, witness as aforesaid, and the said witness, James McCorkle, who was of sound mind and lawful age, and was by me carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing, in the presence of the witness and from his statements, and after carefully reading the same to the witness he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up and directing the same, with this certificate of the reasons aforesaid for taking said deposition, with my own hand to the court for which the same was taken. And I do further certify that I am not of counsel nor attorney for either of the

parties in said deposition and caption named, or in any way interested in the event of the said cause named in said caption.

193 In testimony whereof I have hereunto set my hand and seal this the tenth day of May, in the year of our Lord one thousand eight hundred and seventy-nine, and the Independence of the United States the 103d year.

RUFUS K. BOYD, [SEAL.]
U. S. Commissioner.

The foregoing deposition endorsed as follows, to wit: "Publication made July 17, 1879, by agreement of counsel in writing, and filed at request of C. L. Cleveland, of counsel for plaintiffs. C. Dart, clerk. Filed July 17, 1879. C. Dart, clerk."

The envelope containing the foregoing deposition endorsed as follows, to wit: "Mary A. Nichols et al. vs. Ala. Gold Life-Ins. Co. C. L. 1078. Name of witness, James McCorkle. Clerk of the circuit court of the United States for the eastern district of Texas, Galveston Texas.

194 Rec'd from the hands of R. K. Boyd in good order. W. A. Bear, P. M. Received from the post-office at Galveston, Texas, May 20, 1879. C. Dart, clerk. Filed May 20, 1879. C. Dart, clerk. Publication made July 17, 1879, by agreement of counsel, in writing, and filed at request of C. L. Cleveland, of counsel for plaintiffs. C. Dart, clerk."

(Across the seal thus:) "Rufus K. Boyd, U. S. commissioner."

Agreement of counsel to open depositions.—Filed July 17th, 1879.

Circuit court of the United States for the eastern district of Texas.

MARY A. NICHOLS ET AL.
vs.
ALABAMA GOLD LIFE-INSURANCE COMPANY. } Law. No. 1078.

We hereby consent and agree that all depositions now on file in said cause, in which publication has not been made, may be opened

195 by the clerk, upon request of counsel for either party, without further notice, and with the same effect as if published upon order of the court, as usual in such cases, the said court not now being in session, and it being the desire of the parties to have the said depositions published at once.

July 16th, 1879.

WILLIE & CLEVELAND,
Att'ys for Pl'ffs.
WAUL & WALKER,
For Def't.

The foregoing agreement endorsed as follows, to wit: "C. L. 1078. Mary A. Nichols et al. vs. Alabama Gold Life-Ins. Co. Agreement of counsel to open depositions. Filed July 17th, 1879. C. Dart, clerk."

Notice to def't to produce papers.—Filed November 3d, 1879.

GALVESTON, *Nov'r* 3d, 1879.

To the Alabama Gold Life-Insurance Company, or to Waul & Walker, their attorneys of record:

You are hereby notified to produce, on or before the trial of the
196 cause of Mary A. Nichols in her own right and as guardian for the minors Ely Nichols, Fally Nichols, Thomas Nichols, and Frank Nichols, now pending in the circuit court for the eastern district of Texas, to be holden for said district in the city of Galveston, Galveston County, Texas, on the first Monday of November, 1879, the "preliminary proofs of loss" in respect of the death of Charles Nichols, under policy No. 6291, issued by said company, which said proof of loss was in due form forwarded to said company through W. S. Harris, agent of said company, on or about the 4th of May, 1878; the said proofs of loss to be used as evidence on the trial of said cause, which is numbered on the docket of said court No. 1078.

WILLIE & CLEVELAND,
Att'ys for Plaintiffs.

The foregoing notice endorsed as follows, to wit: "C. L. 1078. Mary A. Nichols vs. Ala. Gold Life-Ins. Co. Notice to def't to produce papers. Filed Nov. 3, '79. C. Dart, clerk, by Geo. C. Rives, dep't. Willie & Cleveland."

197 *Writ to serve notice to produce papers.—Issued November 3d, 1879.*

United States circuit court for the eastern district of Texas, at Galveston.

MARY A. NICHOLS
vs.
ALABAMA GOLD LIFE-INSURANCE COMPANY. } Law. No. 1078.

The President of the United States of America to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to serve the Alabama Gold Life-Insurance Company, or Waul & Walker, their attorneys of record, with the accompanying certified copy of "Notice to def't to produce papers," to wit, the preliminary proofs of loss in respect of the death of Charles Nichols, under policy No. 6291, to be used as evidence on the trial of the above entitled and numbered cause.

Herein fail not, but due return of this writ make, showing how you have executed the same.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court, this 3d day of November, A. D. 1879.

[SEAL.]

C. DART, *Clerk*;
By GEO. C. RIVES, *Dep't.*

Marshal's return.

Received this writ on the 3d day of November, 1879, and I exe-
198 cuted the same on the 3d day of November, 1879, by delivering to Walker, of the firm of Waul & Walker, attorneys of record for the within-named defendant, in person, at Galveston, Texas, with an accompanying certified copy of "Notice to defendant to produce papers."

WM. J. PHILLIPS,
U. S. Marshal,
By R. O. DEMPSEY,
Deputy.

The foregoing writ endorsed as follows, to wit: "C. L. 1078. Mary A. Nichols vs. Ala. Gold Life-Ins. Co. Writ to serve def't with notice to produce papers. Filed Nov'r 4th, 1879. C. Dart, clerk, by Geo. C. Rives, dept."

Motion.—Filed November 26th, 1879.

Circ't court U. S., eastern district of Texas.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY.

Now comes def't and shows that the application of Chas. Nichols to the Knickerbocker Life-Insurance Company is attached to the deposi-
199 tion of W. S. Coleman, and that a copy of said application is on file among the papers of the cause, and that it is necessary that said application should be attached to interrogatories to Joseph T. Scott, of New Orleans.

Wherefore defendant prays that this court order that said application be detached from the said deposition of W. S. Coleman, for the purpose of appending the same to interrogatories to Joseph T. Scott.

WAUL & WALKER,
Att'ys for Def't.

The foregoing motion endorsed as follows, to wit: "C. L. 1078. Mary A. Nichols et al. vs. Ala. Gold Life-Ins. Co. Motion. Filed Nov'r 26, 1879. C. Dart, clerk."

Order.—From the minutes, November term, November 26th, 1879.

MARY A. NICHOLS ET AL.
vs.
ALABAMA GOLD LIFE-INSURANCE CO. } 1078.

On motion of defendant, by counsel, it is ordered that the appli-
200 cation of Charles Nichols to the Knickerbocker Life-Insurance Company, attached to the deposition of W. S. Coleman, may be detached therefrom, for the purpose of appending the same to interrogato-

ries to Joseph F. Scott, as requested by defendant in its said motion filed in this cause.

Deposition of Joseph T. Scott.—Filed December 3d, 1879.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY. } No. 1078.

Suit pending in the circuit court of the United States, eastern district of Texas.

Interrogatories to be propounded to Joseph T. Scott, a resident of New Orleans, State of Louisiana, a witness for defendant in the above-entitled cause.

Int. 1st. Where do you reside, how long have you resided there, what is your profession, and how long have you practiced it?

Int. 2d. What connection, if any, did you have during the year 1870 with the Knickerbocker Life-Insurance Company?

Int. 3d. Please examine the paper attached hereto, and state if your name is endorsed thereon; and state, if within your knowledge, who wrote it.

Int'y 4th. State fully and explicitly the meaning of the words "Disapproved, Joseph T. Scott, M. D.," and the effect of the same as regarded the action of the Knickerbocker Life-Insurance Company.

201 Int'y 5th. The paper referred to purports to be an application for life-insurance to the Knickerbocker Life-Insurance Company by Charles Nichols; state what was your duty or employment during the year 1870 respecting such application to said company.

Int'y 6th. If you have answered that you disapproved the said application of Charles Nichols, state the reason or reasons which caused you to disapprove the same? Please state fully.

Int'y 7th. Please state any further matters you may know concerning the subject enquired of which may benefit either plaintiff or defendant.

WAUL & WALKER,
Att'ys for Def't.

We hereby waive service of copy, notice, and issuance of commission, and agree that the answers of Joseph T. Scott may be taken by any officer authorized to take depositions to be used in the U. S. courts, reserving all other legal exceptions as to the relevancy and admissibility thereof.

WILLIE & CLEVELAND,
Att'ys for Pl'ff.
WAUL & WALKER,
Atty's for Pl'ff.

X-interrogatories to be propounded to the said Joseph T. Scott.

X-int. 1. Did you ever see or know Charles Nichols?

X-int. 2. What disposition was made of the application, or
202 rather the writing containing the application, of Charles Nichols; was it, according to custom, retained in the archives and office the Knickerbocker Life-Ins. Co.?

X-int. 3. Is it or not the custom of said company to retain such documents, to wit, applications for life-insurance, with the archives of said company or in its office?

WILLIE & CLEVELAND,
Att'ys for Pl'ff.

UNITED STATES OF AMERICA, STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Deposition of Dr. Joseph T. Scott, taken and subscribed before me, James Fahey, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, residing in the city of New Orleans, on the twenty-ninth day of November, A. D. eighteen hundred and seventy-nine, between the hours of two o'clock p. m. and three o'clock p. m. of said day, at my office, No. 162 Common st., in the city of New Orleans, parish of Orleans and State of Louisiana, at the request of Ed. Livingston, esq., of this city, agent of Waul & Walker, atty's at law for *plaintiffs* in the suit hereinafter mentioned, and to be read as evidence in a certain cause now pending in the circuit court of the United States, eastern district of Texas, wherein Mary A. Nich-
203 ols & als. are plaintiffs and the Alabama Gold Life-Insurance Company defendants.

The said Dr. JOSEPH T. SCOTT, a resident of New Orleans, State of Louisiana, a witness for defendant in the above-entitled cause, known to me to be of lawful age, being to me at the time and place aforesaid produced, being first by me duly sworn according to law to testify the truth in regard to the matter in controversy in the aforesaid suit, did then and there, on his oath aforesaid, depose and say and answers to the hereunto annexed interrogatories propounded to him as follows, to wit:

To interrogatory 1st he answers: In New Orleans, La., for fifteen years; that of practicing physician and surgeon; I have practiced for twenty-three years.

To interrogatory 2d he ans.: Medical examiner and reviser of its Southwestern branch.

To interrogatory 3d he ans.: Yes; I did.

To interrogatory 4th he ans.: Dis'proved because of my belief that applicant was not a good risk be'ause of family history and disproportion between height and weight. My endorsements were always final with Knickerbocker Ins. Co., they never having changed any endorsement of mine.

To interrogatory 5th he ans.: Was to read them over carefully, and to to decide as to their merit.

To interrogatory 6th he ans.: Vide the answer to interrogatory No. 4.)

204 To interrogatory 7th he ans.: I don't know of anything further.

Cross-interrogatory.

To 1st cross-interrogatory he ans.: Not that I know of.

To 2d cross-int'y he ans.: I can't answer, as I had no other acquaintance than my professional connection with the company.

To the 3d cross-interrogatory he ans.: So long as its Southwestern branch was in operation they kept all records; now, after this branch ceased to be, I presume that its records went to the main office.

And thereupon the deponent has hereunto signed his name. (One word erased and the word "they" interlined.)

JOSEPH T. SCOTT, *M. D.*

Sworn to and subscribed before me this 29th day of November, A. D. 1879.

[SEAL.] JAMES FAHEY, *Not. Pub.*

I, James Fahey, notary aforesaid, duly commissioned and qualified and acting as such in and for said parish of Orleans, State of Louisiana, do hereby certify and make known that the foregoing deposition of Dr. Joseph T. Scott, a resident of New Orleans, La., was taken before me on the said 29th day of November, 1879, at the time and place in the caption
205 hereof mentioned; that the examinations, responses, and statements of said deponent were reduced to writing by my clerk, Michel V. Dyan, and by the said deponent sworn to before me and subscribed in my presence at the time and place aforesaid.

In witness whereof I have hereunto set my hand and official seal at New Orleans, this said 29th November, 1879.

[SEAL.] JAS. FAHEY, *Not. Pub.*

Fees for taking deposition, postage, &c., five dollars ($5.00).

The foregoing deposition endorsed as follows, to wit: "Publication made by order of court at request of C. L. Cleveland, of counsel for pl'ffs, Dec'r 3, '79. C. Dart, clerk, by James T. Spann, dept. Filed Dec. 3, '79. C. Dart, clerk, by James T. Spann, dept."

The envelope containing the foregoing deposition endorsed as follows, to wit: "Mary A. Nichols et. al. vs. The Alabama Gold Life-In-
206 surance Company. No. 1078. Deposition of Joseph T. Scott. To the clerk of the circuit court of the United States for the eastern district of Texas, Galveston, Texas. Received this package from the hands of James Fahey, notary public, the officer before whom the enclosed depositions were taken, this the first day of December, A. D. 1879. W. L. McMillen, postmaster at New Orleans, La., by E. R. Hunt, asst. p. m. Rec'd from post-office at Galveston, Texas, Dec. 3, '79. C. Dart, clerk, by James T. Spann, dept. Filed Dec. 3, '79. C. Dart, clerk, by James T. Spann, dept. Publication made by order of court at request of C. L. Cleveland, of counsel for pl'ffs, Dec. 3, '79. C. Dart, clerk, by James T. Spann, dept."

Order for attachment for defaulting witnesses.—From the minutes, November term, December 4th, 1879.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INS. CO. } 1078.

207 It appearing that Drs. E. H. Watts and S. M. Welsh have been duly summoned as witnesses on behalf of the defendant, and their

fees tendered to them, and they having failed to obey the summons, and the case having been called, and the defendant declining to announce ready in the absence of said witnesses, now, on motion of counsel for defendant, it is ordered that process of attachment issue to compel the attendance of said witnesses forthwith before this court to testify in this cause.

Replication.—Filed December 4th, 1879.

In U. S. circuit court for E. district of Texas.

MARY A. NICHOLS ET AL.
vs.
ALABAMA GOLD LIFE-INS. CO.

Now comes plaintiffs and, replying to the amended answer of defendant herein pleaded, denies all the allegations thereof.

WILLIE & CLEVELAND,
Att'ys for Pl'ff.

The foregoing replication endorsed as follows, to wit: "C. L. No. 1078. Mary A. Nichols et al. vs. Ala. Gold Life-Ins. Co. Replication. Filed Dec. 4, 1879. C. Dart, clerk, by James T. Spann, dept."

208 *Order: 1st day's hearing.—From the minutes, November term, December 4th*, 1879.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE CO. } 1078.

This day came the parties to this suit, by their attorneys, and the issues being joined, thereupon came a jury of good and lawful men, duly elected, tried, impaneled, and sworn, and accepted by the parties as a lawful and competent jury to try the cause, to wit, R. O'Hanlan, J. N. Lord, E. Reinecke, Joseph Nass, J. H. Forbes, Wm. Selkirk, Robert A. Park, Thomas Goggan, Jim Blair, Harry Johnson, Wm. Vowinkle, and John J. Reddy; thereupon the pleadings were presented and read before the court and jury, and the hearing of the evidence begun, which not being concluded, and the trial of the case not being concluded, the further consideration thereof was postponed until to-morrow.

Order: 2d *day's hearing.—From the minutes, November term, December 5th*, 1879.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY. } 1078.

On this day again came the parties to this suit, by their attorneys, and thereupon the trial of the case was resumed before the court and jury, and the evidence not being concluded, and the trial of the case not being concluded, the further consideration thereof was postponed until to-morrow.

209 *Certificate of State's commissioner of insurance, &c.—Filed December 6th*, 1879.

No. 25.] DEPARTMENT OF INSURANCE STATISTICS AND HISTORY,
Austin, Texas, March 31st, 1879.

This is to certify that the Alabama Gold Life-Insurance Company, of Mobile, Ala., having complied with all the requirements of law relating to life and health insurance companies in this State, and having exhibited a certificate from the comptroller of public accounts showing payment of the State occupation tax for one year from the 1st day of January, 1879, is hereby authorized to pursue the business of life insurance throughout this State from the 1st day of January, 1879, to the 31st day of December, 1879, upon payment to county and municipal corporations in which said company may do business such other and additional tax as may be required or authorized by law.

In testimony whereof I hereunto sign my name and affix the impress of my official seal the day and date first above written.

[SEAL.] (Signed) V. O. KING,
Commissioner.

DEPARTMENT OF INSURANCE, STATISTICS, AND HISTORY,
Austin, Texas, Dec'r 1, 1879.

210 I hereby certify that the within is a true copy of the original certificate of authority issued from this office.

Witness my hand and the impress of my official seal.

[SEAL.] V. O. KING,
Commissioner.

The foregoing certificate endorsed thus: "C. L. 1078. Filed Dec'r 6, 1879. C. Dart, clerk."

Receipt of W. S. Harris.—Filed December 6th, 1879.

[T. N. Fowler, secretary; C. E. Thames, president; Alabama Gold Life-Insurance Co., home office, Mobile; cash capital, $200,000 gold; W. S. Harris, agent.]

GALVESTON, TEXAS, *May* 4, 1878.

Received from Mr. Wharton, branch proof of claim papers in the case of Chas. Nichols, policy No. 6291, for forwarding to the home office of the Alabama Gold Life-Ins. Co.

W. S. HARRIS, *Ag't.*

The foregoing receipt endorsed thus: "C. L. 1078. Filed Dec'r 6, 1879. C. Dart, clerk.

211 *Declaration of incorporation.—Filed December 6th*, 1879.

A declaration to incorporate the Alabama Gold Life-Insurance Company

SECTION 1. Under and by authority of an amendment to section seventeen hundred and fifty-five (1755) of the revised code of this State,

adopted by the general assembly of the State of Alabama and approved August 6th, 1868, and other sections contained in chapter three (3), title two (2), part two (2), of said code, and other provisions therein that may be applicable, the undersigned hereby make this declaration in writing for the incorporation of the Alabama Gold Life-Insurance Company.

SECTION 2. The capital stock of said company shall be two hundred thousand dollars ($200,000) in United States gold coin, which shall be divided into two thousand shares of one hundred dollars each, and its corporate name shall be the Alabama Gold Life-Insurance Company, the principal office being located in Mobile.

SECTION 3. The object of the company shall be the insurance of human life, by the issuance of policies of every kind and description, payable in gold or currency, as insurers may desire, and according to the terms of the policy, the premiums on which shall be paid in gold or currency, according to the nature of the policy; and to do and perform such other acts and things in the employment and disposition of its assets and
212 capital as ordinarily pertain to the business of life-insurance companies.

SECTION 4. This company may hold, purchase, dispose of, and convey real estate to the extent of not over one hundred thousand dollars in gold value at any one time, and may elect, control, and discharge such officers and agents, and also appoint such agent or agents to solicit policies and extend their business as they deem necessary to their interest.

SECTION 5. The company may make by-laws not inconsistent with the Constitution and laws of the United States and this State, for the transfer of its stock, the management of its property, and the regulation of its affairs.

SECTION 6. The stock herein subscribed shall be called for and paid in such installments as the directors may think proper, not exceeding ten per cent. at any one time, and at intervals of not less than three months; and for the unpaid portion of each shareholder's stock a promissory note shall be given to the company with such security as may be satisfactory to the directors; and if any shareholders shall fail to pay the first installment called for, or to give such note and security, within thirty days after notice to do so, he shall forfeit to the company his stock and shall be no longer a shareholder therein.

Such forfeiture shall be entered on the minutes of the company, and shall thereby be full and complete.

213 SECTION 7. The names of the stockholders, and the number of shares held by each are as follows, to wit:

(Here follows the list of subscribers to the amount of $200,000 in gold.)

Received in office for record October 18th, 1868, and recorded in miscellaneous book G, pp. 695, 696, and 697.

G. HORTON, *Judge.*

OFFICE OF SECRETARY OF STATE,
Montgomery, June 11th, 1875.

I hereby certify that the foregoing is a correct copy of the declaration of incorporation of the Alabama Gold Life-Insurance Company now on file in this office.

(Signed) R. K. BOYD,
Secretary of State.

[Alabama, great seal. One dollar; State of Alabama; tax on seals. One dollar; State of Alabama; tax on seals.]

DEP'T INSURANCE, STATISTICS, & HISTORY,
Austin, Texas, Dec. 1, 1879.

This is to certify that the above and foregoing four pages of writing are a correct of the original on file in my office.

Given under my hand and seal of office the day and date above written.

[SEAL.] V. O. KING, *Commissioner.*

The foregoing endorsed thus: "C. L. 1078. Filed Dec'r 6, 1879. C. Dart, clerk."

214 *Receipt of agent for premium.—Filed December 6th,* 1879.

ALABAMA GOLD LIFE-INSURANCE COMPANY, MOBILE, ALA.

Capital, $200,000 in gold.

MOBILE, *April 23d,* 1876.

Received from Charles Nichols one hundred and two $\frac{20}{100}$ dollars premium, due April 23d, 1876, on policy No. 6291 (in lieu of No. 639, Texas Mutual, policy surrendered), insuring $5,000 in lawful money of the United States for 12 months, ending on the 23d day of April, 1877, at noon.

Not binding until countersigned by J. W. Sylvester, cashier, at Galveston, Texas.

T. N. FOWLER, *Secretary.*

Cash premium, $102.20.

[SEAL.] $102.20. J. W. SYLVESTER, *Agent, Cashier.*

Foregoing endorsed thus: "C. L. 1078. Filed Dec'r 6, 1879. C. Dart, clerk."

Orders of county court of Galveston County granting letters of guardianship to Mary A. Nichols.—Not marked filed.

IN THE MATTER OF THE ESTATE OF THE NICHOLS MINORS. } No. 1170. June 11th, 1878.

This day came on to be heard the application of Mary A. Nichols, praying for letters of guardianship of the persons and estate of the
215 minors, W. Eley, C. Hally, Thomas P., and Frank J. Nichols, and it appearing to the court that due notice of the filing of said application has been given, as required by law, and that no objections thereto have been made or filed, and the said application having been heard and duly considered by the court, and it thereupon appearing that said minors are without any lawful guardian, and that said applicant is the mother of said minors, and that she is not disqualified by law from being appointed their guardian, it is thereupon considered, adjudged, and decreed by the court that said application be granted; that said Mary

Nichols be, and she is hereby, appointed guardian of the persons and estate of said minors, and that letters of guardianship do issue to *him* upon her entering into a duly approved bond, conditioned according to law, in the sum of five thousand dollars, within ten days from this date, and taking the oath by the statute prescribed.

IN THE MATTER OF THE ESTATE OF THE NICHOLS MINORS. } No. 1170. June 18th, 1878.

This day Mary A. Nichols, who was heretofore, to wit, on the 11th day of June, 1878, appointed guardian of the persons and estate of said minors, filed her duly-approved bond, conditioned according to law, in the sum of five thousand dollars, and she having taken the oath by the statute prescribed: Therefore, it is ordered that letters of guardianship do now issue to her.

216 THE STATE OF TEXAS,
County of Galveston:

I, C. T. McMahan, clerk of the county court in and for said county of Galveston, do hereby certify that the above and foregoing is a true and correct copy of the minutes of said court, and contains the orders and decrees of the same in the matter of the estate of the Nichols minors, as is therein set forth, and as the same appears of record in my office, and these letters are granted to the said Mary A. Nichols to prove her capacity to act as guardian of said minors.

Witness C. T. McMahan, clerk of the county court of Galveston County.

Given under my hand and the seal of said court, at my office, in the city of Galveston, on this 20th day of June, A. D. 1878.

[SEAL.] C. T. McMAHAN,
Clerk. C. C., G. Co.

Receipt of agent of Tex. Mut. Life-Ins. Co. for premium.—Not marked filed.

TEXAS MUTUAL LIFE-INSURANCE COMPANY OF GALVESTON,
Galveston, April 23d, 1875.

Received from Charles Nichols one hundred and two $\frac{20}{100}$ dollars premium, due April 23d, 1875, on policy No. 638, insuring $5,000 for 12 months ending on 23d day of April, 1876, at noon.

217 Not binding until countersigned by U. M. Neblett, ag't at Galveston.

B. B. RICHARDSON, *Sec'y.*

U. M. NEBLETT, *Agent.*
Premium, $102.20.

Notice to policy-holders.

All premiums are due and payable at the company's office in Galveston, but agents having the proper receipts, signed by the president, vice-president, secretary or actuary, are authorized to receive premiums not overdue, on countersigning the receipts, as evidence of payment.

Agents are not authorized to make, alter, or discharge contracts, or waive forfeitures.

Order: 3d day's hearing.—From the minutes, November term, December 6th, 1879.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY. } 1078.

On this day again came the parties to this suit, by their attorneys, and thereupon the trial of the case was resumed before the court and jury; and the evidence being resumed and concluded, the argument was begun, which, not being concluded, and the trial of the case not being concluded, the further consideration thereof was postponed until Monday next.

218 *Order: 4th day's hearing.—From the minutes, November term, December 8th,* 1879.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE CO. } 1078.

On this day again came the parties to this suit, by their attorneys, and one of the jurors in the cause being too ill to attend court, the consideration of the cause was postponed until to-morrow.

Charges asked by def't and refused.—Filed December 9th, 1879.

MARY A. NICHOLS AND OTHERS
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY.

This suit was instituted by the plaintiffs against the defendant to recover the sum of five thousand dollars, being the amount of a policy issued to plaintiffs upon the life of Charles Nichols by the defendant on the 31st day of January, 1876.

The plaintiffs also claim from the defendant reasonable attorney fees and 12% damages on the amount recovered.

The policy of insurance sued on was issued by the defendant and was substituted for a policy of insurance issued on the 23d day of April, 1873, for the benefit of the plaintiffs, and in consideration of the representations made to the Texas Mutual Life-Insurance of Galveston by Charles Nichols, on the said 23d day of April, 1873, and upon the
219 further consideration of the surrender of the Texas Mutual Life-Insurance Company's policy, No. 638, for the sum of $5,000, issued upon the life of the said Charles Nichols and dated on the 23d of April, 1873, and the further consideration of one hundred & two dollars & twenty cents, to be paid annually during the existence of said policy.

The defendant has raised no question before you on the proof of plaint-

iff's claim, and the plaintiff has proved everything before you necessary to recover in this suit, and you will find a verdict for the plaintiff's for the sum of five thousand dollars, with interest at the rate of 8% per annum—

Unless the defendant has established by testimony adduced before you a state of case that will prevent their legal recovery.

The defence relied upon by defendant, and on account of which the defendant insists that the plaintiffs are not entitled to recover, is because the said Charles Nichols in his answers to various questions asked in his application to the Texas Mutual Life-Insurance Company made statements that were untrue, and by reason of said untrue statements the policy sued on was rendered null and void.

And you are now instructed: The application of Charles Nichols to the Texas Mutual Life-Insurance Company for his insurance upon his life, dated April 23, 1873, together with the policy of insurance of said
220 company, issued to said Nichols on the same date, and the policy of the Alabama Gold Life-Insurance Company sued on, are to be construed together as though they were one instrument and together forming the contract between the parties.

And the declarations and statements made by said Nichols in said application, and his answers to the several questions therein, are warranted to be in all respects true, and without the suppression of any facts relating to his health or circumstances, or of his family, affecting the interests of the defendant, and the violation of this condition, in any respect, renders the policy null and void, and the plaintiffs cannot recover thereon.

If the jury believe from the testimony that either of the brothers or sisters of Charles Nichols were affected with pulmonary consumption, before the 23d of April, 1873, then his answer "No" to question No. 16, in the application of that date, which asks, "Have your parents or brothers or sisters been afflicted with insanity, or with pulmonary or scrofulous, or any other constitutional disease, hereditary in its character?" was untrue, and the jury should find a verdict for the defendant.

If the jury believe from the testimony that either of the sisters of Charles Nichols died with consumption before the 23d of April, 1873, then his answer, that he had had four sisters, that one was living, aged thirty years, that her health was good, that three of his sisters were dead, one having died in childbirth, aged twenty-five years, another of general debility, aged eighteen years, and the other one of pneumonia,
221 aged twenty-five years, to that part of question No. 15, in the application dated April 23d, 1873, which asks, "How many sisters; how many living, and their ages;" how many dead, and age at death; cause of death?" was untrue, and the jury should find a verdict for the defendant.

If the jury believe from the evidence that Charles Nichols knew that either of his brothers died with pulmonary consumption, before the 23d of April, 1873, then his answer that he had two brothers dead, aged 37 and 38 years, respectively, and that he did not know the cause of their death, to that part of question No. 15, in his application dated April 23d, 1873, which asks, "How many brothers have you had; how many are living, and their ages; state of health; how many are dead?" was untrue, and the jury should find a verdict for the defendant.

If the jury believe from the testimony that Charles Nichols, before the

23d of April, 1873, the date of the application to the Texas Mutual Life-Insurance, had made an application to the Knickerbocker Life-Insurance Company, for an insurance upon his life, and the same had been declined by that company then his answer "No" to question No. 6, which asks, "Has any application for insurance ever been declined?" was untrue, and the jury should find a verdict for the defendant.

If the jury believe from the testimony that either of the brothers or sisters of Charles Nichols died with pulmonary consumption before the
222 23d of April, 1873, then his answer "No" to question No. 16, in the application of that date, which asks, "Have your parents or brothers or sisters been afflicted with insanity, or with pulmonary or scrofulous, or any other constitutional disease, hereditary in its character? was untrue, and the jury should find a verdict for the defendant."

I decline to give the charges as requested.

(Signed) AMOS MORRILL, *Dist. Judge.*

The foregoing charges asked by def't and refused, endorsed as follows, to wit: "C. L. 1078. Mary A. Nichols, et al. vs. Alabama Gold Life-Ins. Co. Charged asked by def't & refused. Filed Dec'r 9th, 1879. C. Dart, clerk."

223 *Charge of court.—Filed December 9th,* 1879.

NICHOLS ET AL.
vs.
INS. COMPANY.

The pl'ffs have brought suit based upon a policy of insurance of the life of Charles Nichols. As there can be no doubt of the fact that all the conditions required by the contract of insurance from and after the delivery of the policy were fully performed, the only question raised by the pleadings, which it is necessary for the jury to consider, is based upon a provision in the policy:

"That if the declaration, or any part thereof, made by or for the insured in the application for the Texas Mutual Life-Insurance Company's policy, for which the policy sued on is substituted, upon the faith of which this policy is made, shall be found in any respect untrue, then and in every such case the policy shall be null and void."

The def't, in his answer, alleges that the conditions of this proviso have been violated, and specifies as such violations the answers to questions 6, 15, and 16, which are: "Has any application for insurance ever been declined; and, if so, for what reason? What was the cause of the death? Have your parents or brothers or sisters been afflicted with insanity, or with pulmonary or scrofulous or any other constitutional disease, hereditary in its character?" To 15th. Ans. "Don't know." To 6th and
224 16th questions, the applicant answered "No." And the defendant alleges that the answers were false, and that the applicant well knew they were false when he made them.

In rendering your verdict the only question of importance and controversy is, did the applicant knowingly answer these questions falsely? In other words, was the answer to either or all of these questions false, and

did the defendant know that they were false at the time he answered them?

I shall not undertake to analyse the testimony, but simply make some suggestions that may enable you to faithfully and correctly discharge your duty.

The sixth question is not, "Has any application for insurance been made in any other company?" but, "Has any application for insurance ever been declined; and, if so, for what reason?"

This question includes in its answer three distinct transactions, an application for a policy, a rejection of the same by the company, and the reasons assigned by the company for its rejection.

If the applicant had made an application, and he knew nothing of its rejection or approval, he is not expected to know that the application was declined, and still less is he expected to know of any reason on the part of the company for declining. He was bound to answer the question, the first part of the question, with one of the monosyllables,
225 yes or no, and if he should answer yes, to give the reason that the company gave him for declining to take the risk.

As the question carries on its face the idea that an insurance company gives a reason for declining an application, the applicant is not bound to consider anything short of a positive declaration on the part of a company that they decline as such declination.

Therefore, if you believe from the testimony that the company communicated such declination previous to the 23d April, 1873, you will find for the defendant.

We now refer to the answer to question 16: "Have your parents or brothers or sisters been afflicted with insanity, or with pulmonary or scrofulous, or any other constitutional disease hereditary in its character?" To this question the insured answered "No."

If the testimony introduced has convinced you that the answer thus given is untrue, and that defendant knew it was untrue, then you will find for the def't.

The 14 & 15 questions relate to the cause of the death of the relatives, father, mother, brothers, and sisters. In reply he said his father died of pneumonia; did not the cause of death of his mother or brothers; that one of his sisters died of childbirth, one of general debility, and one of pneumonia. It is to be presumed that he would know the cause
226 of the death of his near and dear relatives if he was present at their death and there was no doubt as to the disease of which each died. But if he was not present, or if there was difference of opinion as to the disease, if some thought one disease prevailed and some another, and if these different diseases resembled each other in more or less respects, then and in that case different persons would state what they supposed was true, and yet state different diseases. In this, as in the other cases, you will ascertain from the testimony if the applicant did state what he knew to be false in giving his answers; and, if so, you will find for the defendant.

The defendant has produced as testimony a certain paper, purporting to be an application to the Knickerbocker Life-Insurance Co. by the insured. This was permitted to be introduced for the purpose of testimony relative to the question whether any application to another company had been denied, and was ruled by the court that what was stated by the insured in the application as to the health or diseases or causes of death of the rela-

tives could not be regarded as testimony. You will recollect that the judge stated as reasons for such ruling that the suit was not brought by the party sought to be insured, or his legal representatives, and therefore the general law authorizing all admissions made by parties to suit being made contrary to their own interest may be given in evidence. We
227 might still further add that two contradictory statements made by one and the same person do not establish the truth or falsity of either. In the case before the court the applicant might or might not be better apprised of facts at one time than another to influence him to make different answers.

But the great objection to the testimony thus offerred and extensively commented upon by the atto's is that it was simply the opinion of a person not a party to the suit, not given under oath, and not subject to cross-examination. You will, therefore, in arriving at your verdict, disregard all that was said by the applicant in his application to the Knickerbocker Co. relative to family diseases.

Should you find for the def't you will say so, and should you find for the plaintiff you will so state, and your verdict will be 5,000 dollars and interest at 8% from 90 days after notice given to the company of the death of the insured, and you can also find or not a sum not exceeding 12% on this amount in addition therefor and such attorneys' fees as may have been proved to your to be reasonable.

(Signed) AMOS MORRILL, *Dist. Judge.*

The foregoing charge endorsed as follows, to wit: "C. L. 1078. Mary A. Nichols et al vs. Alabama Gold Life-Insurance Company. Charge of court filed Dec'r 9, 1879. C. Dart, clerk, by James T. Spann, dept."

228 *Original petition in State court.—Filed as to verdict December 9th, 1879.*

Ju. dist. court for Galveston County, Texas, to Oct. term, 1878.

THE STATE OF TEXAS,
Galveston County:

To the hon. district court in and for said county and State:

The petition of Mary A. Nichols and W. Eley Nichols and C. Hally Nichols, and Thomas P. Nichols, and Frank Nichols, the four last-named of whom are minors under the age of twenty-one years, and sue by their mother, the said Mary A. Nichols, who is the guardian of the persons and estates of the said minors, duly appointed and qualified under the authority of the hon. county court of Galveston County aforesaid; all of whom reside in said State and county, as plaintiffs complaining of the Alabama Gold Life-Insurance Company, of Mobile, in the State of Alabama, a corporation created by the laws of the State of Alabama by the above name and style, having authority to make and issue policies of life-insurance, and having its principal office and place of business in the city of Mobile, in the State of Alabama, and hereinafter styled, defendant, respectfully represents—

That the said Mary A. Nichols is the surviving wife of Charles Nichols, late of Galveston County, Texas, now deceased; that the said W. Eley Nichols, and C. Hally Nichols, and Thomas P. Nichols, and

Frank Nichols are the children of the said Charles Nichols,
229 deceased, and as such were interested in and had an insurable interest in the life of the said Charles Nichols. that on the thirty-first day of January, A. D. 1876, the said defendant, for the consideration hereinafter mentioned, made, executed, and delivered to the said Charles Nichols, then living, a policy of insurance on the life of said Charles Nichols for the term of his natural life, and commencing on the day and year last aforesaid, for the benefit of the said Mary A. Nichols, the wife of the said Charles Nichols, and the children of the said Charles and Mary A. Nichols, whose names have been heretofore stated as plaintiffs, wherein and whereby the said defendant undertook and promised, in effect, among other things, to pay to the plaintiffs the sum of five thousand dollars within ninety days after due notice and proof of interest and of the death of said Charles Nichols, deducting therefrom all credits for premiums on said policy unpaid at the time, together with any balance of the year's premiums remaining unpaid. The said policy of insurance was issued in consideration of the representations made to the Texas Mutual Life-Insurance Company, of Galveston, by application dated 23d day of April, 1873, and upon further consideration of the surrender of the Texas Mutual Life-Insurance Company's policy No. 638, for the sum of five thousand dollars in lawful money of the United States, dated the 23d day of April, 1873, issued upon the life of said Charles Nichols, and the further consideration price of the annual premium of one hundred
230 and two dollars and twenty cents, to be paid on the 23d day of April (or within thirty days thereafter) in each and every year during the continuance of the said policy; the first of the said annual premiums falling due on the 23d day of April, 1876.

And the said plaintiffs allege that the said annual premiums called for by the said policy of insurance were each and every one paid according to the tenor and effect of the said policy to the said defendant in cash as they respectively became due and payable.

The plaintiffs further allege that said policy of life-insurance was made, executed, and delivered as aforesaid by the proper officers of the said defendant, and in all respects in the form and in accordance with the usage of said defendant, which said policy of insurance is herewith filed as an exhibit marked "Exhibit X;" and plaintiffs ask that the same be considered as a part of this petition.

Petitioners allege that the said Charles Nichols died on, to wit, the 20th day of April, 1878, while the said policy of insurance was in full force and effect; that his death did not occur from any cause which would have avoided said policy; that the said Charles Nichols, in his life-time, did observe and perform all and each of the duties and obligations imposed upon him by the terms and conditions of said policy of insurance. Plaintiffs allege that after the death of the said Charles Nichols, and as
231 soon as practicable, to wit, on the 1st day of June, A. D. 1879, the said plaintiffs did make out and furnish to the said defendants, in accordance with the terms of said policy of insurance, what is denominated as "preliminary proof," containing due notice and proof of interest and of the death of the said Charles Nichols, and of the time and place thereof.

That the said Mary A. Nichols is the surviving wife of the said Charles Nichols, and that her coplaintiffs are the children of the said Charles Nichols and the said Mary A. Nichols, his wife, and the issue of their

said marriage, and that the plaintiffs are the beneficiaries of said policy of insurance.

That by reason of the premises said defendant became liable to pay, and undertook & promised to pay, to the plaintiffs within ninety days after the notice and proof of interest and of the death of said Charles Nichols, to wit, on the first day of September, A. D. 1878, the said sum of five thousand dollars, according to the tenor and effect of the said policy of insurance, besides interest thereon at the rate of eight per cent. per annum.

Plaintiffs allege that at the expiration of ninety days after the said notice of loss & proofs of death and interest were furnished & as aforesaid, the plaintiffs demanded payment of the aforesaid sum of money specified in said policy of insurance from the defendant, and the said defendant then and there, to wit, on the 1st day of September, 1878, refused to pay said sum
232 of money or to adjust and pay the said loss aforesaid. That by reason of the refusal of the defendant to pay the amount of said policy within ninety days after due notice and proof of interest and the death aforesaid, the said defendant became liable to pay to the plaintiffs, in addition to the said loss, damage as called for in said policy of insurance, damages for such default & failure, to the extent of twelve per cent. on the full amount mentioned in said policy, to wit, twelve per cent. on five thousand dollars, making in the aggregate for damages for such refusal and failure to pay policy the further sum of six hundred dollars.

And also the said defendant, by reason of the premises, became and is liable for all reasonable attorneys' fees for prosecution of plaintiffs' claim on said policy herein. That reasonable attorneys' fees herein is of the value of five hundred dollars, for all of which the defendant became bound and was and is liable to pay to the plaintiffs, and on the day and year last aforesaid promised to pay to the plaintiffs, but which they have refused to do; to the damage of the plaintiffs in the aggregate sum of ten thousand dollars.

That defendant has wholly refused and still refuses, though often requested, to pay either and all of the aforesaid sums of money or any part thereof to the plaintiffs.

Wherefore an action hath accrued to the plaintiffs therefor.
233 That the said defendant company is a foreign company, incorporated without the State, to wit, in the State of Alabama, but is doing business within this State under and by virtue of the authority contained in the act of the legislature of the State of Texas, entitled "An act to regulate life and health insurance companies and all associations, partnerships, or individuals doing life and health insurance business, incorporated within or without the State of Texas," approved May 2, 1874.

That William Sumpter Harris is the duly authorized agent of defendant residing in the county of Galveston, Texas, upon whom under the laws of the State aforesaid, process can be served against said company.

Wherefore, premises considered, the plaintiffs pray for process herein to be served on said defendant's duly authorized agent, William Sumpter Harris, and that they have judgment for the amount of money specified in said policy, to wit, five thousand dollars, with eight per cent. interest thereon per annum, accrued and to accrue thereon, and for further special damage of six hundred dollars for refusal & failure to pay said death loss, and the further special damages for reasonable attorneys' fees of five hun-

dred dollars, and for their general damage and for all costs of suit, and for all other further and general relief which the nature of the case
234 stated and proved will under the law authorize the court to grant, and as in duty bound, &c.

WILLIE & CLEVELAND,
Att'ys for Pl'ffs.

Verdict of the jury endorsed upon foregoing instrument.

DEC'R 9, 1879.

We, the jury, find a verdict for the plaintiff in the sum of sixty-six hundred and ten dollars, enumerated, viz:

Am't of policy	$5,000 00
Interest at 8 per cent. from Sept. 1, '78, to date	510 00
Twelve per cent. damages	600 00
Attorneys' fees	500 00
	$6,610 00

WM. SELKIRK, *Foreman.*

The foregoing instrument endorsed as follows, to wit: "9685. Mary A. Nichols et al. vs. Alabama Gold Life-Insurance Company. Filed Sept. 25, 1878. J. N. Harrison, clerk C. G. Co. Filed as to verdict Dec. 9th, 1879. C. Dart, clerk. Willie & Cleveland, att'ys for pl'ffs."

235 *Verdict & judgment.—From the minutes, November term, December 9th,* 1879.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE CO. } 1078.

On this day again came the parties to this suit by their attorneys, and the jurors aforesaid, duly elected, tried, impaneled, and sworn, and accepted by the parties as a good and lawful and competent jury to try the cause, and being now in court here, thereupon the trial of the cause was resumed and concluded, and the jurors aforesaid having heard the pleadings and the evidence, and argument of counsel, and having received the charge of the court, retired to consider of their verdict, and after due deliberation returned into court, and returned their verdict as follows: Dec'r. 9, 1879, we, the jury, find a verdict for the plaintiff in the sum of sixty-six hundred and ten dollars, enumerated viz:

Am't of policy	5,000 00
Interest at 8 per cent. from Sept. 1, '78, to date	510 00
Twelve per cent. damages	600 00
Attorneys' fees	500 00
	$6,610 00

WM. SELKIRK, *Foreman.*

Wherefore it is considered, adjudged, and decreed by the court that the plaintiff herein, Mary A. Nichols, in her own right, and as guardian of her minor children, W. Eley Nichols, C. Hally Nichols, Thomas P. Nichols, and Frank Nichols, do have and recover of and from the defendant
236 herein, the Alabama Gold Life-Insurance Company of Mobile, in the State of Alabama, the said sum of six thousand six hundred and ten dollars, as by the jury aforesaid assessed, and also all costs about this suit incurred, and have execution therefor.

Bill of exceptions.—Filed December 9th, 1879.

Be it remembered that on the trial of the above case Doctor S. W. Welch, a witness for the defence, being called, stated that he was a practicing physician and had been since 1857; that he was acquainted, both from reading and practice, with pulmonary consumption. The counsel for the defence then asked the witness the following question (the witness having also stated that he was the consulting physician to pass upon applications for insurance in the Texas Mutual Life-Insurance Company, April 23, 1873):

If the application of Charles Nichols had in it the statement that one brother of the said Nichols and one sister of the said Nichols had died with pulmonary consumption, would you have approved the taking of the risk? Which was objected to by the plaintiff and the objection sustained by the court; to which the defendant then and there excepted.

The defendant then asked the witness if he had heard the testimony of Doctor McGowan read, and from that testimony to state what was the cause of her death, and of what disease did she die. Which was objected to by the plaintiff upon the ground that under the pleadings the
237 evidence was not relevant, and also because the defendant had taken the evidence of Doctor Gregory by deposition in respect to the same subject, and which the plaintiff intended to read as evidence, the plaintiff having interest in the said deposition, if the defendant should decline to read it, and that without the testimony of Dr. Gregory the whole facts with respect to the subject upon which the witness Welch was asked for an opinion would not before or known to him; which objection was sustained by the judge; to which the defendant then and there excepted, and prayed that this his bill exception be signed and sealed by the judge, which is accordingly done.

(Signed) AMOS MORRILL, [SEAL.]
Dist. Judge.

The foregoing bill of exceptions endorsed as follows, to wit: "C. L. 1078. Mary A. Nichols et al. vs. Alabama Gold Life-Ins. Co. Bill of exceptions. Filed Dec'r 9th, 1879. C. Dart, clerk."

Remittitur.—Filed December 10th, 1879.

MARY ALICE NICHOLS IN HER OWN BEHALF and as guardian for her minor children, W. Eley Nichols, C. Hally Nichols, Thomas
238 P. Nichols, and Frank Nichols,
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY.
} No. 1078.

In the circuit court *for* the United States *of* the eastern district of Texas.

Now comes the plaintiffs in the above-entitled cause, by their attorneys of record, and here in open court enters a remittitur of the following amounts recovered by them against the defendant in this cause, viz: The twelve per cent. damages, amounting to six hundred dollars, also the further sum of five hundred dollars, recovered as attorneys' fees, and also the further sum of five hundred and ten dollars, recovered as interest, amounting in the aggregate to sixteen hundred and ten dollars, which sum last named is the aggregate amount now remitted, leaving the amount of said judgment to be for the amount of five thousand dollars and costs of suit.

WILLIE & CLEVELAND,
Att'ys for Plaintiffs of Record.

The foregoing remittitur endorsed as follows, to wit: "No. 1078. Mary A. Nichols et al. vs. Alabama Gold Life-Insurance Co. Remittitur. Filed Dec'r 10, 1879. C. Dart, clerk."

239 *Order.—Remittitur.—From the minutes, November term, December 10th, 1879.*

MARY ALICE NICHOLS IN HER OWN BEHALF and as guardian for her minor children, W. Eley Nichols, C. Hally Nichols, Thomas P. Nichols, and Frank Nichols,
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY.
} 1078.

This day came the plaintiffs in the above-entitled cause, by their attorneys of record, and here in open court entered a remittitur of the following amounts recovered by them against the defendant, in this cause, viz: The twelve per cent. damages amounting to six hundred dollars, also the further sum of five hundred dollars, recovered as attorneys' fees, and also the further sum of five hundred and ten dollars, recovered as interest, amounting in the aggregate to the sum of sixteen hundred and ten dollars; which sum last named is the aggregate amount now remitted, leaving the amount of said judgment to be for the amount of five thousand dollars and costs of suit.

Wherefore it is considered, adjudged, and decreed by the court that the sum of sixteen hundred and ten dollars be, and the same is hereby, remitted from the verdict and judgment entered in this cause on yesterday, and

that the plaintiffs have and recover from said defendant the sum of five thousand dollars, and also all costs about this suit incurred as of the date of said judgment, and have execution therefor instead of the sum of six thousand six hundred and ten dollars, and also all costs about this suit incurred as in said judgment is recited.

240 *Motion for new trial.—Filed December 20th, 1879.*

M. S. NICHOLS & AL.
vs.
ALA. GOLD LIFE-INS. CO.

And the defendant comes and moves the court for a new trial in the above case:

1st. Because the court erred in stating the issues submitted to the jury.

2d. Because the court charged the jury to find upon an immaterial issue, and one not made in the case.

3d. Because the court failed to charge the jury upon the *the* issues material to the case.

4th. Because the court charged upon the weight of the testimony.

5th. Because the court refused to give the several charges asked by defendant.

6th. Because the court erred in instructing the jury to disregard the statements made by Charles Nichols in his application to the Knickerbocker Life-Ins. Co.

7th. Because the court erred in charging the jury that the answers to questions No. 6, 15, and 16, must not only be false, but that the answers must have been known to be false by the applicant, Charles Nichols.

8th. Because the jury found contrary to the law and the evidence in the case.

WAUL & WALKER,
Att'ys for Def't.

The foregoing motion endorsed thus: "Filed Dec'r 20, 1879. C. Dart, clerk, by James T. Spann, dept."

241 *Motion for new trial entered.—From motion docket, December 20th, 1879.*

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE CO. } 1078.

This day came the defendant, by its attorneys, and filed herein its motion for a new trial in this cause.

Entered Dec'r 20, 1879.

Attest:

C. DART,
Clerk U. S. Circ't Court, E. D. T., G.

Motion for new trial submitted.—From the minutes, November term, December 30th, 1879.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY. } 1078.

On this day again came the parties to this suit by their attorneys, and thereupon came on to be heard the motion of the defendant herein for a new trial in this cause; and the said motion, having been heard and argued by counsel for the respective parties before the court, was submitted.

Motion for new trial overruled.—From the minutes, November term, 1879, January 5th, 1880.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY. } 1078.

242 The motion of the defendant for a new trial in this cause, having been fully heard and argued by counsel for the respective parties before the court at a former day of this term, and submitted; and the court having duly considered the said motion, and being now fully advised, it is ordered that the said motion be overruled.

Application & leave to withdraw.—Filed January 8, 1880.

MARY A. NICHOLS ET AL.
vs.
ALABAMA GOLD LIFE-INS. CO. } C. L. 1078. Circ't court U. S., E. D. T.

To the hon. the judges of said court:

Now comes defendant and shows that the application of Charles Nichols to the Ætna Life-Insurance Company, on file in this case, is the property of said Ætna Life-Insurance Company, and not of this defendant, and that said company is desirous of acquiring possession of the same.

Wherefore this defendant prays that this court allow the said application to be withdrawn upon a certified copy being filed in lieu thereof.

WAUL & WALKER,
Att'ys for Def't.

It is hereby ordered that the application of Charles Nichols for a policy of life-insurance to the Ætna Life-Insurance Company, among the files of the above entitled and numbered cause, be permitted to be with-
243 drawn from said files upon a copy thereof, certified by the clerk of this court, being left in lieu thereof.

AMOS MORRILL,
Dis't Judge.

The foregoing instrument, endorsed as follows, to wit: "C. L. 1078. Mary A. Nichols et al. vs. Alabama Gold Life-Ins. Co. Leave to Waul & Walker to withdraw policy of life-insurance to the Ætna Life-Ins. Comp'y, by leaving certified copy thereof. Filed Jan'y 8, 1880. C. Dart, clerk, by Geo. C. Rives, dept.

Order: Leave to withdraw.—From the minutes, November term, 1879, January 8th, 1880.

MARY A. NICHOLS ET AL.
vs.
ALABAMA GOLD LIFE-INSURANCE COMPANY. } 1078.

Upon application of Waul & Walker, attorneys for defendant in this cause, it is hereby ordered that the application of Charles Nichols for a policy of life-insurance to the Ætna Life-Insurance Company, among the files of the above entitled and numbered case, be permitted to be
244 withdrawn from said files upon a copy thereof, certified by the clerk of this , being left in lieu thereof.

Bill of exceptions by defendant.—Filed January 8th, 1880.

MARY A. NICHOLS ET AL.
vs.
THE ALABAMA GOLD LIFE-INSURANCE COMPANY. } No. 1078.

Be it remembered that on Thursday, the 4th day of December, 1879, came on to be heard the case of Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company, upon the issues joined before the Hon. Amos Morrill, judge of the district court of the United States for the eastern district of Texas, sitting as a circuit judge, at which time came the respective parties by their attorneys, and upon the trial the plaintiffs put in evidence the policy sued upon, executed by the defendant, which is as follows:

EXHIBIT X.

The Alabama Gold Life-Insurance Company of Mobile.

Number, 6291.] [Amount, $5,000
Age, 36 y'rs.] [Premium, $102.20.
Term, life.] [When due, April 23rd.

This policy of insurance witnesseth that the Alabama Gold Life-Insurance Company of Mobile, in consideration of the representations made to the Texas Mutual Life-Insurance Company of Galveston, by application dated the 23d day of April, 1873, and upon the faith of which this policy is issued, and in further consideration of the surrender of the Texas
245 Mutual Life-Insurance Company's policy No. 638, for the sum of five thousand dollars in lawful money of the United States, dated the twenty-third day of April, 1873, issued upon the life of Charles Nichols, of Galveston, county of Galveston, and State of Texas, and of the an-

nual premium of one hundred and two dollars and twenty cents, in lawful money of the United States, to be paid on the twenty-third day of Ap'l (or within 30 days thereafter) in each and every year during the continuance of this policy; the first of the said annual premiums falling due the twenty-third day of April, eighteen hundred and seventy-six, do assure the life of Charles Nichols, of Galveston, county of Galveston, State of Texas, for the sole use and benefit of Mary Alice Nichols, wife, and the children of Charles and Mary Alice Nichols, as beneficiaries, in the amount of five thousand dollars in lawful money of the United States.

And the said company do hereby promise and agree to and with the said above-mentioned beneficiaries, or their executors, administrators, assigns, or guardians of children under age, well and truly to pay or cause to be paid, at the city of Mobile, the said sum insured to the said above-mentioned beneficiaries or their legal representatives, within ninety days after due notice and proof of interest (if assigned or held as security) and of the death of said party whose life is insured by this policy, deducting therefrom all credits for premiums on this policy unpaid at the time, together with any balance of the year's premiums remaining unpaid:

246 Provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is accepted by the assured upon these express conditions, that the said insured is hereby permitted and limited to reside and travel by the usual modes of conveyance, either land, river, lake, or coastwise, in any portion of the United States and Territories; the settled portions of the Canadas, Nova Scotia, and New Brunswick; also, in times of peace, to cross and recross the Atlantic Ocean in Government or first-class steamers or sailing vessels, and travel and reside within that portion of Europe bounded by the fortieth and sixtieth degrees of latitude and the twentieth degree of longitude east from Greenwich. And if the said insured shall pass beyond the describedl imits, or shall, without the consent of this company, engage personally in blasting, mining, submarine operations, or in the production of inflam'able or explosive substances, or in working or managing a steam-engine in any capacity, or as a mariner, engineer, fireman, conductor, or laborer, in any capacity upon any sea, sound, inlet, river, lake, or railroad, or shall enter any military or naval service whatsoever (the militia when not in actual service excepted), or if he shall die by delirium tremens, in consequence of a duel, or in violation of the laws of any nation or Government where he may be, then, and in every such case, this policy shall be null and void.

And it is also understood and agreed that in case of the impairment of health of the person upon whose life this policy is issued, by in-

247 temperance or by the practice of any vicious habit tending to shorten life, this company shall have the right to cancel this contract during the life-time of the insured by the payment or tender of payment to the beneficiaries herein above named of the net value of the policy, determined by the American table of mortality, and six per cent. interest.

And it is also understood and agreed that in case of the death of the person upon whose life this policy is issued from or in consequence of the violation of any condition or agreement contained in this contract, or in the application made to the Texas Mutual Life-Insurance Company, or in the policy for which this is substituted, as above stated, this company shall

not be liable beyond the payment of the net value of this policy, determined by the American experience table of mortality, and six per cent. interest.

And it is also understood and agreed, in case of death of the insured during the continuance of this policy, full proofs of death shall be presented to the company without unnecessary delay, and that if payment is refused in consequence of the alleged violation of any condition or agreement herein contained, or contained in the application made to the Texas Mutual Life-Insurance Company, or in the policy for which this is substituted, as herein above specified, action shall be brought against the company within three months after such refusal or all claims thereon shall be forever barred.

And it is also understood and agreed by the within assured to be
250* the true intent and meaning hereof that if the declaration, or any part thereof, made by or for the said insured in the application for the Texas Mutual Life-Insurance Company's policy for which this is substituted, and bearing date the twenty-third day of April, A. D. 1873, and upon the faith of which this policy is made, shall be found, in any respect, untrue, then, and in every such case, this policy shall be null and void; or in case the said assured shall not pay the said premiums on or before the date mentioned for the payment thereof, and the interest annually on all credits on account of premiums until the same are fully paid up, then and in every such case this policy shall be void.

And it is also understood and agreed that when all premiums upon this policy shall have been paid for three years or more (rec'oning from the date of the Texas Mutual Life-Insurance Company's policy for which this is substituted), and any subsequent premiums shall have become due and not be' paid, a paid-up non-participating policy will be issued for an equitable amount; provided that this policy be surrendered and application made for said paid-up policy within three months from the expiration of the time for which all the premiums have been paid; otherwise this policy shall become null and void.

And it is further agreed that in every case where this policy shall cease or be or become void, all payments made thereon shall be forfeited to said company.

In no case shall this policy be in force until the actual payment
251 of the premium herein named to an authorized agent of the company.

In case this policy is assigned a copy of the assignment shall be given to this company, and in event of the death of the insured during the continuance of the assignment, the company is only liable for the amount of interest proved by the assignee within the limits of the policy.

In witness whereof the president of the said Alabama Gold-Life Insurance Company has hereunto subscribed his name, attested by the secretary, and caused the corporate seal of the said company to be affixed at their of-

*NOTE BY CLERK.—Error in numbering pages here only; no part of transcript omitted.

Attest:

C. DART,
Clerk U. S. Circ't Court, E. D. T., G.

fice in the city of Mobile and State of Alabama, this the thirty-first day of January, one thousand eight hundred and seventy-six.

[SEAL.] C. E. THAMES, *President.*

T. N. FOWLER, *Secretary.*

Not binding unless countersigned by J. W. Sylverton, agent at Galveston, Texas.

The foregoing policy endorsed on the margin thus: "Policies issued for the benefit of married women or minors are positively not assignable. In event of assignment of this policy the assignee is only vested with rights to the extent of h' insurable interest at date of maturity of said policy; provided said interest be not in excess of the amount of this policy. The residue, if any, reverting to the company. Non-participating.

252 (The foregoing policy endorsed on the back thus:)

☞ To make the intent, meaning, and purpose of the parties to this contract clear and indisputable, it is hereby specifically agreed that in event of the death of the within insured during the continuance of the within policy (anything contained therein to the contrary notwithstanding), and the refusal of this company to pay the amount that may be claimed as due thereon after the expiration of ninety days from date of satisfactory proof at the death of the said insured, filed at the office of this company, then this company shall not be permitted, in law or equity, to plead any defense on the within policy inconsistent with and not legally warranted by the terms, stipulations, and agreements contained in the Texas Mutual Life-Insurance Company's policy, for which this policy is substituted as herein set forth.

It is further specially agreed that in event any claim arising on the within policy is contested by this company for any alleged cause whatever, then the application for said Texas Mutual Life-Insurance Company's policy, and the Texas Mutual Life-Insurance Company's Policy as within described, and for which the within policy is substituted as stated, shall be jointly and severally taken and accepted as the real contract between the company and the insured in accordance herewith.

It is further specially agreed that in event this company for alleged violation of any of the terms or conditions of the policy for which this
253 is substituted as stated, shall refuse to pay in (accordance with the terms herein set forth), any claim set up or arising on the within policy, then this company shall produce in court the said within described Texas Mutual Life-Insurance Company's policy as the grounds and basis of their defence against said claim, or be forever barred against any defense on the within policy either in law or equity.

Signed by the president of the said Alabama Gold Life-Insurance Company, attested by their secretary, the place and date herein written.

C. E. THAMES, *President.*

T. N. FOWLER, *Secretary.*

(Endorsements:) Filed Dec'r 6, 1879. C. Dart, clerk. "C. L. 1078. Sub. for Texas M. L. Ins. Co. policy, No. 6291. Alabama Gold Life-Insurance Company of Mobile. Assurance on the life of Charles Nichols.

Amount $5,000. Date January 31st, 1876. Term, life. Annual premium, $102.20. Due April 23. Policy $ $102.20. Register B. Folio . Filed Sept. 25, 1878. J. P. Harrison, cl'k C. G. Co.

By the plaintiff it was proved that Charles Nichols died on the 20th of April, 1878, that the plaintiffs were, respectively, the surviving wife and children of said Charles Nichols, the beneficiaries of the policy; that Mary A. Nichols was the guardian of said children; that all the several
254 annual premiums on said policy were paid by said Nichols as they became due, and he took renewal receipts, the last of which is as follows:

[Alabama Gold Life-Insurance Company, Mobile, Ala. Capital $200,000 in gold.]

MOBILE, *April 23d*, 1877.

Received from Charles Nichols one hundred and two $\frac{20}{100}$ dollars, premium due April 23d, 1877, on policy No. 6291, insuring $5,000 in lawful money of the United States for 12 months, ending on the twenty-third day of April, 1878, at noon. Not binding until countersigned by W. S. Harris, agent at Galveston, Texas.

Cash premium $102.20.

[SEAL.] $.

T. N. FOWLER, *Secretary*.

W. S. HARRIS, *Agent p'm's*.

Endorsements: "C. L. 1078; Filed Dec. 6th, 1879. C. Dart, clerk."

Plaintiffs read in evidence the preliminary proofs of claim:

ALABAMA GOLD LIFE-INSURANCE COMPANY,
No. 34 St. Francis Street, Mobile, Ala.

Notice and proof of claim.

Policy No. 6291.] [Amount insured, $5,000.00.

☞ In cases where the following forms do not apply, or fail to give such information as shall be satisfactory to the directors, they will require such other information as will enable them to judge of
255 the identity of the person, the justness of the claim, &c.

Notice is hereby given the Alabama Gold Life-Insurance Company of Mobile that Charles Nichols, late of Galveston City, county of Galveston, State of Texas, has deceased; that said Charles Nichols was the same person insured by said Alabama Gold Life-Insurance Company in the sum of five thousand dollars, by their policy of insurance number 6291, dated , 18 , and that under the terms and conditions of said policy the same becomes payable to me as the lawful holder and owner of said policy, and as guardian for my minor children; and I hereby declare that our interest in said policy is to the full amount of $5,000, and do further declare that the statements in thé annexed certificates A and B are correct:

In proof of said death, and my claim under the before-mentioned policy, I answer as follows:

1. Name of deceased; residence.

1. Charles Nichols; Galveston City.

2. Occupation at date of insurance.

2. Merchant, in grain business.

3. Occupation since the insurance was affected.

3. Same.

4. Place and date of birth.

4. Claysville, Marshall Co., Ala., Sept. 13th, 1837.

5. Place and date of death.

5. Near San Antonio, Bexar Co., Tex., April 16th, 1878.

6. How long have you been acquainted with the deceased?

6. About ten years.

256 7. State all facts regarding cause of death.

7. He had taken cold in Dec'r last and that developed into consumption.

8. How long had he been sick?

8. About 4 months.

9. Did he die suddenly, or was his decease after an illness of months weeks days' duration?

9. No. (Stated above.)

10. Has the said deceased, since the date of the application for the above-mentioned policy, resided away from Galveston; if so, when and for what period, and at what place? Or has he at any time visited any portion of country beyond the limits prescribed in the policy, or made any voyage to sea; if so, when and where? State these particulars fully.

10. No. He went to St. Louis summer before last; was gone about six weeks.

11. Has the deceased at any time been engaged in any military or naval service, or been engaged as principal or otherwise in a duel?

11. No.

12. Did the deceased die of suicide?

12. No.

13. Refer to the said policy of insurance in question, and state whether, to your knowledge or belief, the insured has complied with all the conditions contained therein.

13. I read the policy. He has complied with its conditions.

14. How does your interest in the policy in question arise?

257 14. I am his surviving widow, and it is payable to me and our children W. Eley Nichols, C. Hally Nichols, Thomas P. Nichols, and Frank J. Nichols; these four, all minors, are all of the children we have, or either of us have.

Dated at Galveston this 3d day of May, 1878.

(Signed) MARY ALICE NICHOLS.

STATE OF TEXAS,

County of Galveston, ss:

On this 4th day of May, A. D. 1878, personally appeared before me the above-named Mary A. Nichols, to me known, and made oath that the

foregoing statement by her made is true and full to the best of her knowledge, recollection, and belief.

J. P. HARRISON,
Clk D. C. G. Co.,
By A. B. HARRISON,
Dep. Clk.

A.—Attending physician's statement in proof of claim under policy No. , 8

1. Name of the deceased, residence, occupation?
1. Charles Nichols; Galveston; merchant.
2. How long have you been acquainted with the deceased?
2. About 10 or 11 years.
3. Were you his attending physician before his last sickness; if so, how long and for what disease did you prescribe or consult?
3. Yes; visited him Nov. 10 & 11, 1877; suffering from catarrh; sick two days.
4. Were you his attending physician during his last sickness and up to the time of his death?
258 4. Yes. About Feb'y 21st I asked him to go to the interior, and he died up there. I prescribed for him later after he left.
5. Date your *your* first visit during last illness?
5. January 10th, 1878.
6. Date of your last visit?
6. Feb'y 21st, 1878.
7. Date of death?
7. About April 16th, 1878.
8. State the disease, or the cause, or the manner of death, and such medical facts as are connected with the case?
8. Pulmonary consumption, resulting from catarrhal pneumonia.
9. Has he ever had delirium tremens?
9. No.

Dated this day of , 18 .

MACKINZIE JOHNSTON, *M. D.*,
Attending Physician.

STATE OF TEXAS,
County of Galveston, ss:

On this the fourth day of May, A. D. 1878, before me, came the abovenamed Mackinzie Johnston, known to me as a regular physician in good standing, and made oath that the answers by him given to the foregoing questions are true and full to the best of his knowledge and belief.

[SEAL.] J. P. HARRISON,
Clerk District Court of Texas for the County of Galveston.

259 *B.—Statement of the undertaker.*

In proof of claim under policy No. 6291, $5,000.00.

1. Name of deceased, residence, and occupation?
1. Charles Nichols; Galveston, Texas; merchant.
2. Did you see the body of , and do you know that it

was the body of the person described in the accompanying statement of the claimant in this case?

2. We saw Mr. Charles Nichols before his death and after his death; and know he is the same person, and that he is dead and buried.

3. Age of deceased?

3. About 41 years.

4. Place, and date of death?

4. At George Maltsberger's, 10 miles north of San Antonio, Texas.

5. Place and date of interment?

5. April 17th, in grave-yard near Cokin's school-house.

Dated at Galveston, Texas, this 1st day of May, 1878.

JAMES WILSON.
HARRY H. HALL.

STATE OF TEXAS,
County of Galveston, ss:

On this 1st day of May, A. D. 1878, personally appeared before me the above-named James Wilson and Harry H. Hall, to me known, and made oath that the foregoing statement by them made is true and full, to the best of their knowledge, recollection, and belief.

Witness my hand and seal of the district court of Galveston
260 County, Texas, this 1st day of May, 1878.

[SEAL.] J. P. HARRISON,
Cl'k D. C. G. Co.,
By A. B. HARRISON, *Dep. Cl'k.*

C.—Statement of an acquaintance.

In proof of claim under policy No. 6291, $5,000.00.

1. How long have you known Chas. Nichols?

1. About eight years.

2. Place of birth?

2. In Alabama, I believe.

3. Place and date of death?

3. Near San Antonio; about April 16th, last.

4. Have you seen the remains or body of the person deceased, and is it, to your knowledge, the same person described in the above-named policy of insurance?

4. No; did not see the remains. I have been in business with deceased over six years, and am sure that he is the same person insured in said policy, and am sure he is dead.

5. State all the facts within your knowledge relating to the cause of death?

5. He had consumption.

6. Name and residence of the attending physician?

6. Dr. McKenzie Johnson, Galveston.

7. Is there any circumstances within your knowledge, information, or belief, or have any facts come to your knowledge inconsistent with the statements made by the claimant's physician and undertaker in this case? If so, state them fully?

7. None.

8. Do you know the conditions of said policy?

261 8. It is before me; have read it.

9. Has the deceased, to your knowledge, ever had delirium tremens, or in any manner violated the conditions of said policy of insurance?

9. No.

Dated Galveston, this 3d day of May, 1878.

CHAS. M. WATERS.

STATE OF TEXAS,
County of Galveston, ss:

On this 3d day of May, A. D. 1878, personally came before me the above-named Charles M. Waters, to me known, who, being by me duly sworn, deposed that the answers to the above questions are full and true, to the best of his knowledge, information, and belief.

CHAS. M. WATERS.

Witness my hand and seal of said court this 3d day of May, 1878.

[SEAL.] J. P. HARRISON,
Cl'k D. C. G. Co.,
By A. B. HARRISON,
Dep. Cl'k.

The foregoing proof of claim endorsed thus: "C. L. 1078. The Alabama Gold Life-Ins. Co., of Mobile. Proof of claim under policy No. 6291. Amount insured, $5,000. Life, Charles Nichols. Date of insurance, Ap'l 23, 1873. Date of death, April 16th, 1878. Date of payment, . Filed Dec'r 6, 1879. C. Dart, clerk. ☞All claims are
262 payable only at the office of the company, in the city of Mobile, when due, and on return of the policy legally receipted by the owner thereof."

And proved that the same were furnished to the company defendant, the demand of payment of policy, and its refusal within the time as *presented* by the policy. The plaintiff then offered to prove the value of the services of the attorneys prosecuting the suit under the laws of Texas on that subject, to which defendant objected—

1st. Because the said law was unconstitutional, and imposed a penalty upon a party attempting to litigate its legal rights, and thus changing the nature and obligation of the contract.

2d. Because the original contract of insurance, for which the policy sued on was substituted, was made before the passage of the law allowing attorneys' fees; which objection was overruled, and the defendant then and there excepted, and prayed that such exception should be made a part of the record in this cause.

Pl'ff's proved the said services to be worth five hundred dollars, and closed the evidence in chief.

Defendant introduced the application signed by Charles Nichols to the Texas Mutual Life-Insurance Company and the policy issued thereon, as follows:

263] Agents will please see that all questions are fully answered before transmitting this application to the office. A proper observance in this respect will save all parties much trouble and time.

Application for insurance to the Texas Mutual Life-Insurance Company, Galveston, Texas.

1. Name in full of the person to be insured. Residence. Occupation. Address. Married.	Charles Nichols. Galveston (Texas), County of Galveston, State of Texas. Merchant. Galveston, Texas. Yes.
2. Name in full of the party benefited by the assurance. Residence. Relationship to the person to be assured.	Mary Alice Nichols & child. Galveston, Texas. Wife and child.
3. Sum to be insured. Premium payable—all cash. Half note. One-third loan. Kind of policy desired. Annually. Semi-annually. Quarterly.	$5,000.00. Yes. Stock plan. Yes.
4. Place of birth. Year. Month. Day. Age nearest birthday.	Alabama. 1837. September. 13. 36.
5. Has the beneficiary (if a creditor) an interest in the life to be insured to the full amount applied for?	
6. What amounts, if any, are now insured on your life, and in what company or companies? Has any application for insurance ever been declined; and, if so, for what reasons?	A. 5,000, in Mound City Mutual, of Missouri. B. No.
7. Have you been vaccinated? Or had small-pox or varioloid?	Yes.

8. Are you acclimated to a southern climate? Have you had yellow fever or any of the diseases peculiar to a southern climate?	A. Yes. B. Supposed to have had yellow fever in 1867.
9. Have you ever had any of the following diseases? Bronchitis, Rheumatism, Paralysis, Disease of the heart, of the urinary organs, or any vital part. Consumption, Rupture, Insanity, Asthma, Fistula, Spitting of blood, Scrofula, Gout, Palpitation, Livercomplaint, Fits, Colic, Dropsy, Delirium tremens, Syphilis,	No.
10. Have you ever had any severe injury or illness? If so, what?	No.
11. Are you now, or have you ever been, subject to an habitual cough, dyspepsia, dysentery, or rheumatism?	No.
12. Are you now afflicted with any disease or disorders of any kind; and if so, what?	No.
13. Are your habits of life regular and temperate? How long have you been so?	A. Yes. B. Yes.

		Age, if living.	State of health.	Age at death.	Cause of death.
14. Are your parents living or dead.	Father—Dead. Mother—Dead.			About 50. " 45.	Pneumonia. Do not know.

	How many are living, & their ages?	State of health.	How many dead, and age at death?	Cause of death.
15. How many brothers have you had? 3. How many sisters? 4.	1; 22. 1; 30.	Good. Good.	2: 37 & 38. 3: 1, 25; 1, 18; 1, 25.	Do not know. Of child-bed. General debility. Pneumonia.
264] 16. Have your parents or brothers or sisters been afflicted with insanity, or with pulmonary or scrofulous or any other constitutional disease hereditary in its character?	No.			

17. What ages have your grandparents attained?	Father's side: old. Mother's side: .
18. Name and residence of an intimate friend.	Charles Eley, Galveston, Texas.
19. Name and residence of your attending physician.	Dr. T. J. Haley, Galveston, Texas.

It is hereby declared that the above are fair and true answers to the foregoing questions, and it is agreed by the undersigned that the above statement shall form the basis of the contract for insurance: and also that any untrue or fraudulent answers, or any suppression of facts, with regard to the persons health or habits shall and will render the policy null and void, and forfeit all payments made thereon; also that the policy of insurance hereby applied for shall not be binding upon this company until the first premium, as stated therein, shall have been received by said company, or some authorized agent thereof, during the life-time and good health of the person therein assured.

Dated at Galveston, Texas, this 23d day of April, 1873.

CHAS. NICHOLS, *Applicant*

Witness: JAMES H. TREZEVANT.

(☞Be particular to sign each given name in full.)

Medical examiner's certificate.

The medical examiner is requested to be very minute and thorough in examination, and to make his answers full and explicit.

1. Name and residence of the person examined.	Charles Nichols; Galveston, Texas.
2. Height. Measure of chest on full inspiration. " " " after full expiration. Weight.	5 feet 11 inches. 35½ inches. 33 inches. 140 pounds.
3. Temperament. General appearance. Figure. Habits active.	Sanguine. Healthy. Erect, slight. Yes.
4. Is the respiratory murmur clear and distinct in both lungs? Is the respiration full, easy, and regular? Are there any indications of disease in the lungs? What is the number of respirations per minute?	A. Yes. B. Yes. C. No. D. 18.

5. Is the action of the heart uniform, free, and steady? Are its sounds and r'ythm normal and regular? State the rate and other qualities of the pulse? Are there any indications of disease of the heart or blood-vessels?	A. Yes. B. Yes. C. 80. D. No.
6. Is the party subject to cough, expectoration, difficulty of breathing, or palpitation?	No.
7. Are the functions of the brain, the muscular and nervous systems, in a healthy state?	Yes.
8. Are the functions of the abdominal an' urinary organs in a healthy condition?	Yes.
9. Has the party any apparent tendency from any cause to hereditary disease?	No.
265] 10. Is the party now entirely free from any disease or disorder whatever?	Yes.
11. Do you believe the party to be sober and temperate in all the habits of life?	Yes.
12. If the party has ever had severe injury or illness, what effect upon the constitution?	Nothing to impair the constitution.
13. If a female, how many children has she borne, and is she now pregnant? Is the menstrual functions healthy and regular? Has she ever had any miscarriage or difficulty in labor?	A. B. C.
14. Do you consider the party in all respects a fit person to be insured; and do you recommend that a policy be granted?	I do, and recommend that a policy be granted.

Dated Galveston, Texas, this 21st day of April, 1873.

Approved.

JOHN M. HADEN, *M. D., Medical Examiner.*

S. M. WELCH, *M. D., Consulting Physician.*

NOTE.—Where the medical examiner has not been regularly appointed or recognized as such, the company's blank medical reference must be filled up, signed, and in every case accompany the application.

Attending or family physician's certificate.

(The physician is requested to give any additional information upon the application which he may possess, even though it be not embraced in the annexed answers to the questions.)

1. How long have you known the party?	
2. How recently have you attended the party professionally; and for what disease?	
3. What is the party's present state of health?	
4. Is the party sober and temperate, and has always been so since you have known ?	
5. Has or family relations been afflicted with pulmonary complaints, scrofula, insanity, or any constitutional or hereditary diseases? Is there such a personal or family predisposition?	A. B.
6. Has the party at any time had rheumatism, gout, dropsy, apoplexy, palsy, epilepsy, aneurism, hernia, fistula, spitting of blood, affection of the lungs or other viscera, or any organic disease?	
7. Are the functions of the brain, nervous and muscular systems, the lungs, heart, the abdominal and urinary organs in a healthy condition? Has ever had disease of any of these organs; if so, which?	A. B.
8. Has ever had any serious injury or illness; if so, what, and what effect on the constitution?	

Dated this day of , 187 .
(Signed)

266 *Certificate of a friend of the person to be insured.*

I certify that I have been personally acquainted with during the last years, and do believe that habits of living are temperate; that is now in good health, and ordinarily enjoys good health, and that I know of no constitutional infirmity or other circumstances affecting calculated to make an insurance on life more than usually hazardous, excepting .

Dated this day of , 187 .

(Signed)

The foregoing application, endorsed as follows, to wit: "C. L. 1078. No. 638. Application to the Texas Mutual Life-Insurance Co., Galveston; applicant, Mary A. Nichols; relationship, wife; life of Charles Nichols; residence, Galveston; kind of policy, stock; age, 36; amount insured, $5,000.00; date of policy, April 23, 1873; an'l premium, $102.20; policy, — $102.20; date of application, April 23, 1873; agent, J. H. Trezevant, at Galveston; record book , page . Filed Dec'r 6, 1879. C. Dart, clerk. (Agents are requested not to fill the above blanks.)"

267 THE TEXAS MUTUAL LIFE INSURANCE COMPANY, GALVESTON.

Authorized capital, $1,000,000; capital paid up and secured, $300,000.

[, *Vice President.*
, *President.*]
, *Secretary.*] S. M. WELCH, *M. D. Consulting Physician and Medical Examiner.*

[Premium, $102.02.
Amount, $5,000.00.]
Age, 36 years.] [No. 638.

Ordinary Life Policy. Annual premium, 102\frac{20}{100}$.

In consideration of the representation made to them in the application for this policy, and of the statements respecting the person and family of the person whose life is hereby assured, submitted by or for such person to this company, which application and statements are hereby referred to and made part of this contract, and of the sum of one hundred and two dollars and twenty cents to them duly paid by Mrs. Mary A. Nichols, and of the annual premium of one hundred and two dollars and twenty cents, to be paid on or before the twenty-third day of April in every year during the continuance of this policy, do assure the life of Charles Nichols, of Galveston, in the county of Galveston, State of Texas, in the amount of five thousand dollars (without participation in profits) for the term of his natural life.

And the said company do hereby promise and agree to pay the amount of the said assurance, at their office, in the city of Galveston, to the said Mrs. Mary Alice Nichols and the children of Charles and Mary A. Nichols, their executors, administrators, or assigns, in ninety days after due notice and satisfactory proof of the death, during the continuance of this policy, of the said person whose life is hereby assured as above, the balance of the year's premium, if any, being first deducted therefrom.

And the said company do hereby further promise and agree that if, after premiums upon this policy for not less than two complete years of assurance have been duly received by said company, this policy should cease in

consequence of default in payment of a subsequent premium said company will, on due surrender of this policy, and of the profits thereon, issue in lieu thereof a new paid-up policy upon demand therefor, within thirty days after the said forfeiture, for an equitable amount.

This policy is issued and accepted by the assured and the holder hereof on the following express conditions and agreements:

First. If the person whose life is hereby assured shall travel or reside or be beyond the settled limits or the protection of the Government of the United States (excepting in the settled limits of Europe, the Dominion of Canada, or the Republic of Mexico), or shall enter upon a
268 voyage upon the high seas (excepting to pass as passenger by direct route, in first-class vessels, along the coast of the United States, New Brunswick, Nova Scotia, and Mexico, or between the Altantic coast of the United States and Europe), or shall be personally engaged in blasting, mining, submarine, or aeronautic operations, or the production of highly-inflammable or explosive substances, or in working or managing a steam-engine in any capacity, or as a mariner, engineer, fireman, conductor, express manager, mail agent, or laborer, in any capacity upon service on any sea, sound, inlet, river, lake, or railroad, or shall enter any military or naval service whatsoever (the militia when not in actual service excepted), without the consent of this company in each or either of the foregoing cases previously given in writing, or should die in consequence of a duel, or the violation of the laws of any nation, state, or province, then, and in every such case, this policy shall be null and void.

Second. That the declaration and statements made in the application for this policy or otherwise submitted in writing to this company, on the faith of which declarations and statements this policy is issued, are warranted by the assured and by the holder hereof to be in all respects true, and without the suppression of any facts relating to the health or circumstances either of the person whose life is hereby assured or of his family affecting the interests of this company, and that the violation of this condition, in any respect, renders this policy null and void.

Third. If the premiums, as herein stipulated, shall not be paid in cash on or before the days herein mentioned for the payment thereof, or within thirty days thereafter, at the office of the company, in the city of Galveston (unless otherwise expressly agreed in writing), or to agents when they produce receipts signed by the president or secretary, then in every such case this company shall not be liable for the payment of the sum assured, or any part thereof, and this policy shall cease and determine, excepting only in the case of surrender of policy, as herein expressly provided for.

Fourth. In every case where this policy shall cease and determine, or become null and void, all payments thereon shall be forfeited to the company.

Fifth. If this policy should be assigned or held as security, written notice shall be given to this company, and due proof of interest produced, with the proof of death.

In witness whereof the said Texas Mutual Life-Insurance Com-
269 pany have by their president and secretary signed and delivered this contract, this twenty-third day of April, one thousand eight hundred and seventy-three.

[SEAL.]

J. P. DAVIE, *President.*
B. B. RICHARDSON, *Secretary.*

NOTE.—The president or secretary of the company are alone authorized to make, alter othor or discharge contracts or to waive forfeiture.

Notice to the assured.

PAYMENTS OF PREMIUM.—This policy, when signed by two officers of the company, acknowledges and is a valid receipt for the first payment thereon.

Renewal premiums may be paid in cash to an agent, but only on the production of a receipt signed by the president or secretary, who are alone authorized to sign receipts on the part of the company. No payments made to an agent, without such receipt being given in return by him, is considered valid by the company. When receipts are delivered to a policy holder by an agent, such agent should countersign the same as an evidence of payment to him.

COMMENCEMENT OF ASSURANCE YEAR'S PREMIUM.—All calculations of premiums are made upon the supposition that they will be paid annually in advance; consequently, when premiums are received semi-annually or quarterly, the policy stipulates (in order to prevent loss to the company by death, before the complete premiums of a year have been paid) that the balance of the year's premium, if any, shall be first deducted from the amount assured. Sometimes, again, for the accommodation of assurants, an irregular premium, covering an irregular period of time, is received, followed by regular periodic payments. In such cases the assurance year will be understood to commence at the date of the first regular payment, and the balance of the year's premium (when premiums are paid oftener than yearly) will be the amount necessary to continue the policy in force, until the next anniversary of the first regular payment.

DIVIDENDS.—Dividends will be declared annually, and may be applied either to the increase of the amount assured, or to the reduction of subsequent premiums. No dividend on any policy will be due until the commencement of the assurance year of the policy next following the declaration of such dividend.

POWERS OF AGENTS.—Agents are not authorized to make, alter, or discharge contracts, waive forfeitures, grant permits, name an extra rate for special risks, guarantee dividends, or bind the company in any way; their duties being simply the reception and transmission of applications for policies and premiums, under the rules and instructions of the company.

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Agents of the company are not, under any circumstances, authorized to write the receipts of premiums, or make any endorsement whatever on the policy.

RESTORATION OF FORFEITED POLICIES.—The company may, but solely as an act of grace or courtesy, and when the interests of the company will not be impaired in any way thereby, restore a forfeited policy. When a restoration is applied for, the application must invariably be accompanied by a certificate as to the health of the person whose life was assured, and at his expense, from a physician acceptable to the company.

In all cases of restoration of forfeited policies, and in all cases when the premium is received after the day on which it becomes due, although the policy may not have been formally cancelled in the company's books; the renewal or revival of the policy, in whatever form made, will be, in

accordance with the decision of the Commissioner of Internal Revenue, subject to stamp tax, the some as if a new policy had been issued, and the new stamp must be paid by the policy holder.

ALTERATION OF POLICIES.—Changes in the manner of paying premiums (as from yearly to half yearly, or quarterly, or the reverse) can be made; but when such a change is desired by a policy holder, the policy must be forwarded to the office of the company for the requisite endorsement.

When a policy is altered at the request of the holder, the revenue stamp required on the new form must be paid by him, together with a policy fee of one dollar.

A change of interest in a policy can only be made on the written request of the legal owner of the policy, and with the consent of the company.

ASSIGNMENTS.—When a policy is assigned, written notice of such assignment must be given to the company for registration on its books. All assignments to be valid, require a revenue stamp equal in value to that on the policy, and the costs of such stamp must be borne by the policy holder.

PERMITS AND EXTRA RATES.—Permits are required for travel or residence beyond the limits assigned in the policy, and for hazardous occupations, for which application must be made to the principal office. Extra rates in such cases are always charged as a percentage in the amount assured, and not on the amount of premium. But no extra risk will be
271 covered until the company agree in *in* writing to accept such risk, and until the extra premium, if any, demanded for such risk, is paid.

PROOFS OF LOSS.—In the event of the death of the *a* person assured, application should be made to the company for a blank form of "proofs of death." This form contains affidavits to be made by the attending physician of the deceased, by a friend present at the time of death; by the undertaker having charge of the interment, and by the person to whom the policy is payable. These proofs should be properly filled up and forwarded to the company, and if found satisfactory, payment of the policy will be made by check to the order of the legal holder of the policy, ninety days after the proofs shall have been received by the company on surrender of policy duly receipted.

Ordinarily, if desired, policies will be discounted as soon as the proofs of death have been approved by the company.

When policies have been assigned, the original assignment must be delivered to the company with proofs of death. In the case of the death of an owner of a policy terminated by death, a certificate from the proper officer will be required to show who is authorized to act as executor or administrator of such owner, deceased. If the policy is payable to minors, a proper certificate of the appointment of the guardian will be required.

The foregoing policy of insurance endorsed as follows, to wit: "C. L. 1078. Policy No. 6291, G. L. issued in lieu of No. 638 T. M., Jan'y 31, 1876. No. 638, Texas Mutual Life-Insurance Company. Policy on the life of Charles Nichols. Amount $5,000.00, premium $102.20, policy-fee , $102.20. Payment due April 23d. Register No. 1. Filed Decr. 6th, 1879. C. Dart, clerk."

The defendant then offered in evidence the application of said Nichols, dated 23d , 1876, to the Ætna Life-Insurance Company.

*I, Chas. Nichols, of Galveston, county of Galveston, State of Texas, being desirous of effecting an assurance with the Ætna Life-Insurance Company, in the sum of five thousand dollars, upon my own † life. of , county of , State of , during the whole ‡term of life, do hereby declare and warrant that my age next birthday will be 39 years; that I am now in good health, of sound body and mind, and do usually enjoy good health; and that the following answers and statements are correct and true, in which I have not concealed, withheld, or misrepresented any material circumstance in relation to the past or present state of my health, habits of life, or condition which may render an assurance on my life more than usually hazardous, or with which the directors of said company ought to be made acquainted; § and do hereby declare that I have an interest in the life of the said to the full amount of the said sum of dollars.

And I do hereby agree and warrant that the answers given to the following questions, and the accompanying statements, are true; and this declaration shall be the basis and form part of the contract or policy between me and the said company, and that if the same be in any respect false or fraudulent, the said policy shall be void, and all moneys which may have been paid on account thereof shall be forfeited to said company; and I further agree that the assurance hereby proposed shall not be binding on said company until the amount of premium as stated therein shall be received by said company, or an accredited agent thereof, in the life-time of the said applicant, and a receipt given therefor, signed by the president or secretary of the company.

Dated at Galveston, Texas, this 23d day of June, 1876.

‖(Signed) CHAS. NICHOLS.

Questions and answers above referred to.

1. What is the name, residence, and occupation of the party whose life is proposed to be insured?¶ ☞Give Christian names in full, and plainly written.	Charles Nichols; Galveston, Texas; merchant.			
2. What is the name, residence, and relationship of the person for whose benefit the assurance is proposed?	Mary Alice Nichols & children; wife and children.			
3. What is the place and date of birth of the party whose life is to be insured? ☞Be very particular to answer correctly.	Place. Alabama.	Yr. 1837.	Mo. Sept.	Day. 13.
4. What is the age next birthday? ☞Be particular to answer correctly.	Thirty-nine years.			
5. Is the party whose life is to be assured married? Are the habits of the party sober and temperate?	Yes. Yes.			
6. Has the party ever been addicted to the excessive or intemperate use of any alcoholic stimulants or opium, or does he use any of them often or daily?	No.			
7. Has the party been successfully vaccinated? Has the party had small-pox or varioloid?	Yes. No.			

8. Has the party been acclimated to a southerly climate? If so, when and how? Has the party had the yellow fever, and when?	Yes. By life residence last 10 years in Galveston. Yes; in 1867.
9. Has the party been or is he employed in the Army or Navy? What employments has the party been engaged in? Have these employments had any injurious effect on health?	C. S. A. Merchandising. No.
10. Has the party ever resided in southern, western, or foreign climates; and, if so, what effect was produced on the constitution and health?	No, only as above stated.
11. Are there, or have there ever been, any signs of any nervous affection or of predisposition thereto?	No.

12. Has the party ever had any of the following diseases? Answer yes or no opposite each.

Apoplexy. No.	Epilepsy. No.	Paralysis. No.	Syphilis. No.
Asthma. No.	Fits, or convulsions of any kind. No.	Palpitation. No.	Tumors. No.
Bronchitis. No.	Fistula. No.	Rheumatism. No.	Ulcers. No.
Consumption. No.	Gout. No.	Rupture. No.	Disease of urinary organs. No.
Disease of the heart. No.	Insanity. No.	Spitting of blood. No.	
Dropsy. No.	Liver complaint. No.	Scrofula. No.	

13. Has the party had inflammatory rheumatism? If so, when and how often?	No.
14. Is the party subject to dyspepsia, dysentery, or diarrhœa? Has the party now, or has he had, an habitual cough?	No. No.
15. Has the party ever met with any severe personal injury, or been subjected to any severe surgical operation; or has he any material defect of eye-sight or hearing? If so, state particulars.	No.
16. Has the party had, during the last seven years, any disease or severe sickness? If so, state the particulars of each case, and the name of the attending physician.	No.
17. Have the ancestors of the party generally reached old age?	Yes.

18. Has either of the parents, brothers, sisters, or other near relatives of the party been afflicted with rheumatism, insanity, or with pulmonary, scrofulus, or any hereditary disease?	No; except one brother died of consumption.

19. Are the parents of the party living?	Father. No.	Age.	State of his health.	Mother. No.	Age.	State of her health.
20. Are the parents of the party dead?	Father. Yes.	Age at death. Don't know	Cause of death. Pneumonia.	Mother. Yes.	Age at death. Don't know.	Cause of death. Don't know; was in the Army at that time.

21. How many brothers has the party had?	How many are living.	At what ages?	What is the state of their health respectively?	How many have died?	At what ages?	Of what diseases did they die.
3.	None.			3.	Don't know. " "	1 of consumption. 2 don't know.
How many sisters?						
4.	1.	Ab't 35.	Good.	3.	Don't know. " "	2 don't know. 1 child-birth.

23. What is the name and residence of the family physician of the party, or of one whom the party has usually employed or consulted?	Dr. H. Shearer, Galveston, Tex.
24. What is the name and residence of an intimate friend?	Chas. M. Waters, Galveston, Tex.
25. Has any proposal or application to insure the life of the party been made to any company or agent for which insurance has not been granted? If so, state particulars, and the names of all such companies or agents.	Yes; Knickerbocker, in 1868.
26. What amounts are now insured on the life of the party, and in what companies? If insured in this company, state the number and amount of each and every policy.	$5,000.00, St. Louis Life; $5,000.00 Alabama Gold Life.
27. Has any company, or the agent of any company, in which the party's life has ever been insured expressed an opinion that the risk was undesirable for the company, or refused to reinstate any such insurance after it had lapsed? If so, state particulars and the names of all such companies or agents.	No.

28. Has any physician expressed an unfavorable opinion upon the life of the party, with reference to life-insurance? If so, state particulars.	No.
29. Is the party and the applicant aware that any untrue or fraudulent answers to the above queries, or any suppression of facts in regard to the health, habits, or circumstances of the party to be insured, will vitiate the policy and forfeit all payments thereon? Has he carefully read the questions and answers thereto; and does he understand that all policies and agreements made by the Ætna Life-Insurance Company are signed by its president or secretary, and that no other person can grant insurance or make any agreement binding upon the company?	Yes.

(Signed) CHAS. NICHOLS.

In presence of—
R. J. DAVIS.

[Edition of June, 1874.]

(On margin of policy:)

What kind of policy is desired? Ordinary life, without profits.

Be particular to fill out these blanks:

Amount, $5.000.00. Age, 39. Premium, $157.00 annual payment.

* This declaration and application should be made and signed by the person who applies for insurance. If one person applies for insurance on the life of another, both the applicant and the person whose life is to be insured should sign.
† Insert "my own" if assurance is proposed on the party's own life; if on another's life, insert the person's name.
‡ "Whole term of life," or term of ten, fifteen, &c., years.
§ Erase this sentence if the assurance is proposed on your own life.
¶ The names should be plainly written, and residence given in full. ☞ All the blanks and certificates should be properly filled before sending to the office. ☜
‖ In signing write the Christian name in full.

Mr. Charles Nichols.
Examined at Galveston, Texas, the 24th day of June, 1876.
☞ Examinations must be made by the regularly appointed physician of the Ætna Life-Insurance Co.
N. B.—The medical examiner is requested to be very minute in his examination, to answer each question fully, and to write the result of the examination himself. He is also requested to require the signature of the person examined at the foot of this certificate. During the examination neither the agent nor any other third person should be present.

1. Height, figure, weight, number of inches around the chest, temperament, general appearance, and habits of life.	5 feet 11 in.; erect; 150 lbs.; 33½; sanguine temp.; gen'l appearance, &c., good.
2. Are there or have there ever been any signs of apoplexy, paralysis, epilepsy, insanity, or any other nervous affection, or of predisposition to them?	No.
3. Has the person now or has he had scrofula, rheumatism, gout, aneurism, rupture, tumors, dropsy, or any disease of the kidneys or bladder?	No.
4. What is the stethoscopic character of respiration? Is it full, easy, gentle, and regular? Is the inspiratory murmur full and healthy, and to be heard over both lungs?	Normal. It is. It is.
5. Rate and other qualities of the pulse? Number of respirations per minute? Does percussion or auscultation indicate disease in any part of the viscera of the chest?	80. 20. No.
6. Has the person a cough, occasional or habitual, or occasional or uniform difficulty in breathing?	No.
7. Is the stethoscopic character of the heart's action uniform, free, and unobstructed? Is there any irregular action, or has there been at any time?	Yes. No.
8. Does auscultation indicate enlargement, ossification, or disease of the heart of any kind?	No.
9. Is there any abdominal disease, externally or internally? Have any of the abdominal viscera been diseased?	No. No.
10. Has the person ever suffered from mechanical injury or disease of any kind?	Yellow fever in 1867; has not been ill since.
11. Are the parents of the person living; and, if not, of what disease did they die, and at what age?	See application.
12. Are there any hereditary diseases in the family; and, if so, what are they?	See application; 1 brother died of consumption. The applicant has never shown any tendency to suffer in this way.

13. Opinion of life and prospect of longevity?	Good.
14. Do you consider the person safely insurable, and do you recommend the company to grant a policy?	I do, & recommend the company to grant a policy.
15. Has the person above referred to signed his name below in your presence?	Yes.

JOHN M. HADEN, M. D., *Examining Physician.*

Physician: Where graduated, ; when graduated, .
* Person examined sigh here: CHAS. NICHOLS.
* Write the Christian names in full.

I certify that I have been personally acquainted with , of , during the last years, and do believe that h habits of living are temperate; that h is now in good health, and does ordinarily enjoy good health, and that I know of no constitutional infirmity or other circumstance affecting h calculated to make an insurance on h life more than usually hazardous, excepting .
Dated at this day of , 18 .
(Signed)

(Indorsed:) Stock. Approved. No. 26870; Ætna Life Insurance Company, Hartford, Conn.; date of policy, June 30, 1876; sum assured, $5,000; term of life; life of Charles Nichols; residence, town, Galveston; county, do.; State, Texas; occupation, merchant; benefit of wife, Mary A. Nichols, and his children; declaration dated 23d day of June, '76; age, 39; date of birth, month, Sept.; day, 13; year, 1837; stock; premium, $157.00; extra do., $; policy, $; $158.00; agent, C. H. Brush, at Texas.

☞ Agents are requested not to fill the above blanks.
[Edition June, 1874; Southern rate.]

273 Accompanied by evidence tending to prove that Charles Nichols executed the same, for the purpose of proving that he had made statements showing that he knew he had been rejected by the Knickerbocker Life-Insurance Company before his application to the Texas Mutual Life-Insurance Company, and that he knew of the existence of pulmonary disease in his family; which was objected to by the plaintiff on the ground that no statement or admission made by Charles Nichols subsequent to the application made by him to the Texas Mutual Life-Insurance Company was admissible to affect in any manner the rights of the plaintiffs, who were the assured in the policy, claiming as the parties named in the policy, and the beneficiaries thereof, and Charles Nichols having no interest therein, which objection was sustained by the court, to which the defendant then and there excepted.

The defendant then introduced in evidence the application of Charles Nichols to the Knickerbocker Life-Insurance Company, dated 11th of May, 1870.

The following particulars are required in full from persons proposing to affect assurance on lives in this company:
This applicant, Charles Nichols, of Galveston, Texas, proposes to insure the life of himself, who at present resides at Galveston, Texas, who is (relationship) himself, with the Knickerbocker Life-Insurance Company to the amount of ($5,000) five thousand dollars.

1. A. Kind of policy (whether ordinary life, 10-year, non-forfeiture, or endowment, payable in years). B. Premium, how payable (whether annual, semi-annual, or quarterly). C. Whether all cash, or one-third premium note.	A. Life. B. Annually. C. All cash.
2. A. Married or single. B. Date and place of birth.	A. Not married. B. 13 September, 1837; Marshall County, Alabama.
3. Age nearest birthday.	32 years 8 mos.; office age, 33 years.
4. Occupation.	Merchant.
5. Whether now or formerly, when and how long, and to what degree, subject to or at all affected by any of the following diseases and infirmities: Apoplexy, asthma, bilious affections, bronchitis, consumption, coughs, prolonged disease of the brain, disease of the heart, disease of the lungs, disease of the stomach, disorder of the bowels, disorder of the liver, disease of the bladder, disease of the kidneys, dropsy, diarrhœa, dysentery, dyspepsia, epilepsy, erysipelas, fistula, fits, gout, gravel, insanity, palpitation, palsy, piles, pleurisy, rheumatism, rupture, salt rheum, or any disease of the skin, scrofula, stone or gravel, sore throat, spitting of blood, spinal complaint, vertigo, yellow fever.	I am not subject to any of the diseases except to such bilious complaints as is usual in Texas.
6. A. Has the party been afflicted during the last seven years with any severe or constitutional disease? B. If so, with what?	A. No. B.
7. A. Is the party now diseased? B. If so, with what?	A. No. B.
8. Has the party ever had any serious injury?	No.
9. A. Has the party been vaccinated?	A. Yes.

275 B. Has he had the small-pox; if so, when? C. Are you aware of any fact not stated above tending to impair the health or shorten the life of the party?	B. No. C. No.
10. Which parent does the party mostly resemble?	Father, I suppose.
11. Has either of the parents, brothers or sisters, or near relatives of the party been afflicted with consumption, spitting of blood, rheumatism, gout insanity, scrofula, cancer, or any other disease that tends to shorten life; and, if so, with what, and when?	Two sisters and one brother died, it is said, of consumption.

12. Has the party lost either father, mother, sister, or brother; if so, at what age did death occur, and what was the disease or cause? (Applicant was not in Texas during the sickness of his mother preceding death).

Dead.	Years.	Age.	Of what disease.	How long sick.
Father—Yes.	1849.	Ab't 50.	Pneumonia.	About 2 weeks.
Mother—Yes.	1863 or '4.	Ab't 50.	Don't know.	Confined only short time.
2 brothers.	1855–1867.	30.	Chronic diarrhea.	Long time.
		33.	Consumption.	2 weeks confined.
3 sisters.	1860–1863–1855.	30.	Don't know; childbirth.	Suddenly; don't know.
		18.	Consumption.	Sick long time.

13. If any of the above are living give their ages and state of health.

Living.	Age.		State of health.	
Father—No.				
Mother—No.				
One brother.	21.		Good.	
One sister.	28.		Good.	

14. Name and residence of the party's usual medical attendant, or (if he have none) of some other medical person to be referred to for information as to his health.	Dr. T. J. Haley, Galveston, Texas.
15. Name and residence of an intimate friend to be referred to for similar information.	John Howard, Galveston, Texas.
16. A. Has any application been made to this company or any other company? B. Was it accepted, declined, or withdrawn? C. If declined or withdrawn, for what reason? D. If accepted, state name of office and amount.	A. No. B. C. D.

And I do hereby agree that in the above proposal for assurance all the restrictions in the policy based on this application are binding on me, and shall be the basis and form part of the contract or policy between me and the said company; and that if any fraudulent or untrue allegation, misrepresentation, or concealment as to my health or habits be contained in this proposal, all moneys which shall or may be paid on account of such assurance or dividends due me shall be forfeited to the said company and the policy be void.

And hereby declare that have an interest in the life of said to the full amount of $

And it is further agreed that any insurance based on this application shall not be binding until the policy is actually delivered by the company and the premium settled thereon. And the omission to pay at maturity any note given for premium upon the policy based on this application shall then and thereafter cause the policy to be void without notice to the insured or the insurer, or any party or parties interested therein. Also in case of loss all unpaid notes given either by me or by others for the premium or other indebtedness of the insurer or insured may be deducted from the sum insured; and where the payments made are less that the annual premium the balance of premium unpaid for the current year may be deducted.

Dated at Galveston, Texas, this 11th day of May, 1870.

(Signed) CHARLES NICHOLS.

Witness:

W. S. COLEMAN, *Agent.*

276 *Strike out this sentence if the insurance is proposed on your own life.

☞ A party insuring for their benefit the life of another party must sign the application themselves, or the party whose life is insured must sign for them; for example: If Mrs. Sarah Smith insures the life of her husband, John Smith, she may sign "Sarah Smith," or her husband can sign "for Sarah Smith, John Smith."

*The policy always bears date corresponding to this application.

The foregoing application endorsed on the margin thus:

☞ "Any policy, renewal receipt continuing a policy, permit, consent, or any agreement whatever, concerning insurance, not signed by the president and secretary, is void. Premiums paid to an agent without a receipt signed by president and secretary is not binding on the company.

"Agents will please see that all questions are fully answered before transmitting this application to the office. A proper observance in this respect will save all parties much trouble and time."

Knickerbocker Life-Insurance Company, of the city of New York.

EXAMINATION BY THE COMPANY'S MEDICAL EXAMINER.

Normal weight corresponding to height.			
Ft.	In.	Lbs.	
5	0	110	Name of party examined. Name. Charles Nichols.
5	1	115	Do you believe him to be the party on whose life the accompanying application is made? Answer. I know him to be.
5	2	120	(The examining physician is requested to satisfy himself in all cases as to the identity of the party being examined. Likewise to read the application to the party and inquire if the answers therein are correct.)
5	3	124	
5	4	127	
5	5	132	1. Height and weight. Height, 6 ft. in.; weight, 145 lbs.
5	6	137	Color of eyes and hair. Eyes, black; hair, dark.
5	7	142	Complexion. Florid.
5	8	148	General appearance. Healthy.
5	9	154	Size of chest, carefully measured around nipples, under the vest. Ordinary measure, 34 inches; chest inflated, 36½ inches.
5	10	160	Is the expansion of the chest equal? Yes.
5	11	167	Size around the belly on a line with umbilicus. 29 inches.
6	0	175	

Increasing above six feet 9 lbs. to inch.

277 Table showing the expectation of life at every age, according to the observations made at Carlisle.

Age.	Expect.
10	48. 82
11	48. 04
12	47. 27
13	46. 51
14	45. 75
15	45. 00
16	44. 27
17	43. 57
18	42. 87
19	42. 17
20	41. 46
21	40. 75
22	40. 04
23	39. 31
24	38. 59
25	37. 86
26	37. 14
27	36. 41
28	35. 69
29	35. 00
30	34. 34
31	33. 68
32	33. 03
33	32. 36
34	31. 68
35	31. 00
36	30 32
37	29. 64

2. I' there now existent any disease of the head, external or internal, or any predisposition thereto; any paralysis, vertigo, tremors, or cramps in any part of the system, or any nervous affection of any sort; any disease of the throat or trachea; any cough, occasional or habitual; any profuse expectoration; any spitting of blood; any difficulty in breathing; any palpitation of the heart; any disease of the kidneys or bladder; any injury to the system in any way by syphillis or gonorrhea; and cutaneous eruption on any part of the body; any predisposition to rheumatism or gout, acute or chronic, or to any arthritic disease, or any signs of disease of any sort not included in this list of question'?	No.
3. Has the party any surgical or other disease which might make an operation needful?	No.
4. Has the party any apparent tendency, from any cause, to hereditary disease?	See application. His general appearance is healthful, free from appearance of disease.
5. On a critical examination of the lungs and heart, do you find them perfectly healthy, or predisposed to disease?	State of lungs: Healthy. Condition of heart: Healthy. Respirations per minute, 18. Character of same: Full and free.
6. Rate and other qualities of the pulse.	Rate, 72. Quality: Regular & full.
7. Is there any tendency to obesity indicated by any circumstance?	Tendency to obesity? No. Is there any arcus senilis? No.
8. Is the party considered acclimated?	Has been frequently exposed to yellow fever, but never affected.
9. Is the party now, and has he always been, of temperate habits and appearance?	Yes.

38	28. 95		
39	28. 28		
40	27. 61		
41	26. 97	10. If a female, is she pregnant?	
42	26. 34	Is she subject to any uterine disease?	
43	25. 71	Is she subject to any menstrual disturbance?	
44	25. 09	Has she ever had a miscarriage?	
45	24. 46	Have her labors been natu.al and easy?	
46	23. 82		
47	23. 17		
48	22. 50		
49	21. 81		
278 50	21. 11		
51	20. 39	11. Have you read the application to the party?	Yes.
52	19. 68	Does he state that the answers therein are correct?	Yes.
53	18. 97		
54	18. 28		
55	17. 58		
56	16. 89	12. Have you verified, by detailed investigation, the family history, as given in the application?	Yes.
57	16. 21		
58	15. 55		
59	14. 92		
60	14. 34	13. Have you ascertained, to your own satisfaction, the existence or non-existence of each and every disease mentioned or suggested in both application and certificate?	Yes.
61	13. 82		
62	13. 31		
63	12. 81		
64	12. 30		
65	11. 79		
66	11. 27		
67	10. 75	14. Please give a clear and full opinion of the risk, and state (yes or no) whether you recommend its acceptance or not.	Character of risk: Good.
68	10. 23		Do you recommend its acceptance? Yes.
69	9. 70		

☞ NOTE.—In any case where the risk may seem to the examining physician a safe one, but where family history or individual record may have developed points of possible doubt, a letter giving full reasons for acceptance should invariably accompany this certificate.

The examining physician should bear in mind that the company relies mainly, if not solely, upon his statements in making up its decision whether to take the risk or decline it.

If hereafter it should turn out that the examination had not been thorough, and that the insured was not as good a subject as represented, it would not only be detrimental to the interest of the company, but unpleasant to the physician who made the examination.

It will be the duty of the agent to lay before the examiner the application of the person to be insured, and his family physician's certificate, if required, which, in some cases, may contain important suggestions.

It is not the intention merely to have the examiner fill up or answer the usual questions here propounded; but what the company desires most is his own opinion of the life, founded upon a thorough examination. This certificate will in all cases be confidential.

JOHN M. HADEN, *M. D.*

279 Examined at Galveston, Texas, this 11th day of May, 1870.

NOTE.—This company does not consider it desirable to take cases where the average pulsations are habitually under 56 or over 88 per minute.

The foregoing application endorsed as follows, to wit: "Exhibit A. W. C. Coleman. Application No. 2069. To the Knickerbocker Life Insurance Co. Proposer, Charles Nichols. Relationship, . Life of, himself. Residence, Galveston. Kind of policy, life. Age, 33. Dated, 11' day of May, 1870. Amount insured, $5,000. Annual premium, $. Policy and stamp, $. H. C. Paxson, man'r. Disapproved, Joseph T. Scott, M. D. Declined. Agents will please not fill up these blanks. Filed Dec'r 6, 1879. C. Dart, clerk. Edition of March, 1867."

The defendant then introduced evidence tending to prove that
280 two brothers of Charles Nichols had died of pulmonary consumption, one named James Nichols, about the year 1854, the other named Edward Nichols; both before the application to the Texas Mutual Life-Insurance Company. That the youngest sister died in Texas, and defendant introduced evidence tending to prove that she died in 1861 of rapid consumption.

It was proved that Charles Nichols and another sister, Mrs. Dean, had died of consumption. It was proved that the mother of Charles Nichols did not die of consumption, and that his father died of pneumonia. It was also proved that pulmonary consumption is a constitutional disease hereditary in its character, but not always inherited. That according to the statistics of London hospitals not more than one-third of the cases were traced to inheritance, by which the consumption discended from father or mother to son or daughter or from grandparents to grandchildren.

The testimony showing the disease causing the death of a sister was contradictory, one physician saying that it was consumption and another that it was catamenial. The testimony tending to prove that one of the two brothers of Charles Nichols died of consumption was hearsay testimony.

And thereupon both sides closed, and the counsel for the defendant requested the learned judge to charge the jury as follows:

1st. The application of Charles Nichols to the Texas Mutual
281 Life-Insurance Company for an insurance upon his life, dated April 23, 1873, together with the policy of insurance of said company issued to the said Nichols on the same date, and the policy of the Alabama Gold Life-Insurance Company sued on, are to be considered together as though they were one instrument, and together forming the contract between the parties; and the declarations and statements made by said Nichols in said application and his answers to the several questions therein warranted to be in all respects true, and without the suppression of any facts relating to his health or circumstances, or of his family, affecting the interests of the defendants, and the violation of this condition in any respect rendered the policy null and void, and the plaintiff cannot recover thereon.

2d. If the jury believe from the testimony that either of the brothers or sisters of Charles Nichols were afflicted with pulmonary consumption before the 23d of April, 1873, then his answer "No" to question No. 16, in the application of that date, which asks, "Have your parents or brothers or sisters been afflicted with insanity, or with pulmonary or scrofulous

or any other constitutional disease hereditary in its character?" was untrue, and the jury should find a verdict for the defendant.

3d. If the jury believe from the testimony that either of the sisters of Charles Nichols died with consumption before the 23d of April, 1873, then his answer that he had had four sisters; that one was living,
282 aged thirty years; that her health was good; that three of his sisters were dead, one having died in childbirth, aged twenty-five years, another of general debility, aged eighteen years, and the other one of pneumonia, aged twenty-five years, to that part of question No. 15, in the application dated April 23d, 1873, which asks, "How many sisters; how many living, and their ages; how many dead, and age at death; cause of death?" was untrue, and the jury should find a verdict for the defendant.

4th. If the jury believe from the evidence that Charles Nichols knew that either of his brothers died with pulmonary consumption before the 23d of April, 1873, then his answer that he had two brothers dead, aged 37 and 38 years respectively, and that he did not know the cause of their death, to that part of question No. 15 in his application dated April 23d, 1873, which asks, "How many brothers have you had; how many are living, and their ages; state of health; how many are dead?" was untrue, and the jury should find a verdict for the defendant.

5th. If the jury believe from the testimony that Charles Nichols, before the 23d of April, 1873, the date of the application to the Texas Mutual Life-Insurance, had made an application to the Knickerbocker Life-Insurance Company for an insurance upon his life, and the same had been declined by that company, then his answer "No" to question No. 6, which asks, "Has any application for insurance ever been declined?" was untrue, and the jury should find a verdict for the defendant.

283 6th. If the jury believe from the testimony that either of the brothers or sisters of Charles Nichols died with pulmonary consumption before the 23d of April, 1873, then his answer "No" to question No. 16, in the application of that date, which asks: "Have your parents or brothers or sisters been afflicted with insanity, or with pulmonary or scrofulous or any other constitutional disease hereditary in its character?" was untrue, and the jury should find a verdict for the defendant.

Each and all of which charges the learned judge declined to give as requested, and instructed the jury as follows:

NICHOLS ET AL.
vs.
INS COMPANY.

The pl'ffs have brought suit based upon a policy of insurance of the life of Charles Nichols.

As there can be no doubt of the fact that all the conditions required by the contract of insurance from and after the delivery of the policy were fully performed, the only question raised by the pleadings which it is necessary for the jury to consider is based upon a proviso in the policy, "that if the declaration, or any part thereof, made by or for the insured in the application for the Texas Mutual Life-Insurance Company's policy, for which the policy sued on is substituted, upon the faith of which this

policy is made, shall be found in any respect untrue, then and in every such case the policy shall be null and void."

The def't in his answer alleges that the conditions of this pro-
284 viso have been violated, and specifies as such violations the answer' to questions 6, 15, and 16, which are: "Has any application for insurance ever been declined; and, if so, for what reason?" "What was the cause of the deaths?" "Have your parents, or brothers, or sisters been afflicted with insanity or with pulmonary or scrofulous or any other constutional disease hereditary in its character?" To 15th. Ans. "Don't know." To 6th & 16th questions the applicant answered: "No" And the defendant alleges that these answers were false, and that the applicant well knew that they were false when he made them.

In rendering your verdict, the only question of importance and controversy is: Did the applicant knowingly answer these questions falsely? In other words, Was the answer of the applicant to either or all of these questions false; and did the defendant know that they were false at the time he answered them?

I shall not undertake to analyse the testimony, but simply make some suggestions, that may enable you to faithfully and correctly discharge your duty.

The sixth question is not, "Has any application for insurance been made in any other company?" but "Has any application for insurance ever been declined; and, if so, for what reason?" This question includes in its answer three distinct transactions—an application for a policy, a rejection of the same by the company, and the reasons assigned by the company for its rejection.

If the applicant had made an application, and he knew nothing
285 of its rejection or approval, he is not expected to know that the application was declined, and still less is he expected to know of any reasons on the part of the company for declining. He was bound to answer the question—the first part of the question—with one of the monosyllables, yes, or no; and if he should answer yes, to give the reason that the company gave him for declining to take the risk.

As the question carries on its face the idea that an insurance company gives a reason for declining an application, the applicant is not bound to consider anything short of a positive declaration on the part of a company that they decline as such declination. Therefore, if you believe from the testimony that the company communicated such declination previous to the 23d April, 1873, you will find for the defendant.

We now refer to the answer to question 16: "Have your parents or brothers or sisters been afflicted with insanity, or with pulmonary or scrofulous or any other constitutional disease, hereditary in its character?" To this question the insured answered "No." If the testimony introduced has convinced you that the answer thus given is untrue, and that *def't* knew it was untrue, then you will find for the def't.

The 14 and 15 questions relate to the cause of the death of the relatives, father, mother, brothers, and sisters. In reply he said his father died of pneumonia; did not know the cause of death of his mother or brothers; that one of his sisters died of childbirth, one of general debility, and
286 one of pneumonia. It is to be presumed that he would know the

cause of the death of his near and dear relatives if he was present at their death and there was no doubt as to the disease of which each died. But if he was not present, or if there was difference of opinion as to the disease, if some thought one disease prevailed and some another, and if these different diseases resembled each other in more or less respects, then and in that case different persons would state what they supposed to be true, and yet state different diseases. In this, as in the other cases, you will ascertain from the testimony if the applicant did state what he knew to be false in giving his answers; and, if so, you will find for the defendant.

The defendant has produced as testimony a certain paper, purporting to be an application to the Knickerbocker Life-Insurance Company by the insured. This was permitted to be introduced for the purpose of testimony relative to the question whether any application to another company had been denied, and was ruled by the court that what was stated by the insured in the application as to the health or diseases or causes of death of the relatives could not be regarded as testimony. You will recollect that the judge stated as reasons for such ruling that the suit was not brought by the party sought to be insured, or his legal representatives, and therefore the general law authorizing all admissions made by parties to suit being made contrary to their own interests may be given in evi-
287 dence. We might still further add that two contradictory statements made by one and the same person do not establish the truth or falsity of either. In the case before the court the applicant might or might not be better apprised of facts at one time than another to influence him to make different answers. But the great objection to the testimony thus offered and extensively commented upon by the att'ys is, that it was simply the opinion of a person not a party to the suit, not given under oath, and not subject to cross-examination. You will, therefore, in arriving at your verdict, disregard all that was said by the applicant in his application to the Knickerbocker Co. relative to family diseases.

To which refusal to give the charges asked by the defendant's counsel, as well as to the charges given by the learned judge, the defendant's counsel then and there excepted, as follows:

1st. Because the learned judge declined to charge as requested in defendant's 1st point, to wit: "The application of Charles Nichols to the Texas Mutual Life-Insurance Company for an insurance upon his life, dated April 23d, 1873, together with the policy of insurance of said company, issued to the said Nichols on the same date, and the policy of the Alabama Gold Life-Insurance Company sued on, are to be construed together as though they were one instrument, and together forming the contract between the parties, and the declarations and statements made
288 by said Nichols in said application, and his answers to the several questions therein, are warranted to be in all respects true, and without the suppression of any facts relating to his health or circumstances, or his family, affecting the interests of the defendant, and the violation of this condition in any respect renders this policy null and void, and the plaintiffs cannot recover thereon."

2d. Because the learned judge declined to charge as requested in defendant's 2d point, to wit: "If the jury believe from the testimony that either of the brothers or sisters of Charles Nichols were afflicted with pul-

monary consumption before the 23d of April, 1873, then his answer 'No,' to question No. 16 in the application of that date, which asks, 'Have your parents or brothers or sisters been afflicted with insanity, or with pulmonary or scrofulous or any other constitutional disease, hereditary in its character?' was untrue, and the jury should find a verdict for the defendant."

3d. Because the learned judge declined to charge as requested in defendant's 3d point, as follows: "If the jury believe from the testimony that either of the sisters of Charles Nichols died with consumption before the 23d of April, 1873, then his answer that he had had four sisters, that one was living, aged thirty years; that her health was good; that three of his sisters were dead, one having died in childbirth, aged twenty-five years, another of general debility, aged eighteen years, and the other one
289 of pneumonia, aged twenty-five years, to that part of question No. 15 in the application dated April 23d, 1873, which asks, 'How many sisters; how many living; their ages; how many dead, and age at death; cause of death?' was untrue, and the jury should find a verdict for the defendant."

4th. Because the learned judge declined to charge as requested in defendant's 4th point, as follows: "If the jury believe from the evidence that Charles Nichols knew that either of his brothers died with pulmonary consumption before the 23d of April, 1873, then his answer that he had two brothers dead, aged 37 and 38 years, respectively, and that he did not know the cause of their death, to that part of question No. 15 in his application dated April 23d, 1873, which asks, 'How many brothers have you had; how many are living, and their ages; state of health; how many are dead? was untrue, and the jury should find for the defendant."

5th. Because the learned judge declined to charge as required in defendant's 5th point, as follows: "If the jury believe from the testimony that Charles Nichols, before the 23d of April, 1873, the date of the application to the Texas Mutual Life-Insurance Company, had made an application to the Knickerbocker Life-Insurance Company for an insurance upon his life, and the same had been declined by that company, then his answer 'No' to question No. 6, which asks, 'Has any application for
290 insurance ever been declined?' was untrue, and the jury should find a verdict for the defendant.

6th. Because the learned judge declined to charge as requested in defendant's 6th point, as follows: "If the jury believe from the testimony that either of the brothers or sisters of Charles Nichols died with pulmonary consumption before the 23d of April, 1873, then his answer 'No' to question No. 16, in the application of that date, which asks, 'Have your parents or brothers or sisters been afflicted with insanity, with pulmonary or scrofulous or any other constitutional disease, hereditary in its character?' was untrue, and the jury should find a verdict for the defendant.

7th. Because the learned judge charged the jury, "As there can be no doubt of the fact that all conditions required by the contract of insurance from and after the delivery of the policy were fully performed, the only question raised by the pleadings which it is necessary for the jury to consider is based upon a proviso in the policy, 'that if the declaration, or any part thereof, made by or for the insured in the application for the Texas Mutual Life-Insurance Company's policy, for which the policy sued on is

substituted, upon the faith of which this policy is made, shall be found in any respect untrue, then, and in every such case, the policy shall be null and void.'"

8th. Because the learned judge charged the jury: "The defendant, in his answer, alleges that the conditions of this proviso have been
291 violated, and specifies as such violations the answer to questions 6, 15, and 16, which are: 'Has any application for insurance ever been declined; and, if so, for what reason; what was the cause of deaths; have your parents or brothers or sisters been afflicted with insanity, or with pulmonary or scrofulous or any other constitutional disease, hereditary in its character?' To 15th. Ans. 'Don't know.' To 6th and 16th questions the applicant answered 'No;' and the defendant alleges that these answers were false and that the applicant well knew that they were false when he made them."

9th. Because the learned judge charged the jury: "In rendering your verdict the only question of importance and controversy is, did the applicant knowingly answer these questions falsely. In other words, was the answer of the applicant to either or all of these questions false, and did the defendant know that they were false at the time he answered them?"

10th. Because the learned judge charged the jury: "The sixth question is not 'Has any application for insurance been made in any other company?' but 'Has any application for insurance ever been declined; and, if so, for what reason?' This question includes in its answer three distinct transactions, an application for a policy, a rejection of the same by the company, and the reasons assigned by the company for its rejection. If the applicant had made an application and he knew nothing of its rejection
292 or approval, he is not expected to know that the application was declined, and still less is he expected to know of any reason on the part of the company for declining. He was bound to answer the question, the first part of the question with one of the monosyllables, yes or no, and if he should answer yes, to give the reasons that the company gave him for declining to take the risk. As the question carries on its face the idea that an insurance company gives a reason for declining an application, the applicant is not bound to consider anything short of a positive declaration on the part of a company that they decline as such declination. Therefore if you believe from the testimony that the company communicated such declination previous to the 23d April, 1873, you will find for the defendant."

11th. Because the learned judge charged the jury: "We now refer to the answer to the question 16: 'Have your parents or brothers or sisters been afflicted with insanity, or with pulmonary or scrofulous or any other constitutional disease, hereditary in its character?' To this question the insured answered 'No.' If the testimony introduced has convinced you that the answer thus given is untrue, and that def't knew it was untrue, then you will find for the def't."

12th. Because the learned judge charged the jury: "The 14 & 15 questions relate to the cause of the death of the relatives, father,
293 mother, brothers, and sisters. In reply he said his father died of pneumonia; did not know the cause of the death of his mother or brothers; that one of his sisters died of childbirth, one of general debility, and one of pneumonia. It is to be presumed that he would know the

cause of the death of his near and dear relatives, if he was present at their death and there was no doubt as to the disease of which each died, but if he was not present, or if there was difference of opinion as to the disease, if some thought one disease prevailed and some another, and if these different diseases resembled each other in more or less respects, then and in that case different persons would state what they supposed to be true, and yet state different diseases. In this, as in the other cases, you will ascertain from the testimony if the applicant did state what he knew to be false in giving his answers; and, if so, you will find for the defendant."

13th. Because the learned judge charged the jury: "The defendant has produced as testimony a certain paper purporting to be an application to the Knickerbocker Life-Insurance Company by the insured. This was permitted to be introduced for the purpose of testimony relative to the question whether any application to another company had been declined and was ruled by the court that what was stated by the insured in the application as to the health or diseases or causes of death of the rela-
294 tives could not be regarded as testimony. You will recollect that the judge stated as reasons for such ruling that the suit was not brought by the party sought to be insured, or his legal representatives, and therefore the general law authorizing all admissions made by parties to suit being made contrary to their own interests may be given in evidence. We might still further add that two contradictory statements made by one and the same person do not establish the truth or falsity of either. In the case before the court the applicant might or might not be better apprised of facts at one time than another to influence him to make different answers. But the great objection to the testimony thus offered and extensively commented upon by the attorneys is, that it was simply the opinion of a person not a party to the suit, not given under oath, and not subject to cross-examination. You will therefore in arriving at your verdict disregard all that was said by the applicant in his application to the Knickerbocker Company relative to family diseases."

And thereupon the counsel for the defendant did then and there except to said charge and opinion of the court before the jury retired from the bar, and did then and there tender its bill of exceptions, and prayed that the same be signed & sealed by the judge, and made a part of the record in the cause; which is accordingly done.

(Signed) AMOS MORRILL,
Dis't Judge.

295 The foregoing bill of exceptions endorsed as follows, to wit: "C. L. 1078. Mary A. Nichols et al. vs. Alabama Gold Life-Insurance Co. Bill of exceptions by defendant. Filed Jan'y 8, 1880. C. Dart, clerk.

Writ of error.—Issued January 8th, 1880.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Texas, greeting:

Because in the record and proceedings, as also in the rendition of the

judgment of a plea which is in the said circuit court before you at law, between Mary Alice Nichols in her own behalf, and as guardian for her minor children, W. Ely Nichols, C. Hally Nichols, Thomas P. Nichols, and Frank Nichols, plaintiffs, and, the Alabama Gold Life-Insurance Company, defendant on the 9th day of Dec'r 1879, in favor of the pl'ffs and against the defendant for the sum of $6,610.00, of which sum the pl'ffs on the 10th day of Dec'r, 1879, remitted the sum of $1,610.00, leaving
296 said judgment the sum of $5,000.00 & costs, and said original judgment was referred and re-entered to that effect on said 10th day of Dec'r, 1879, as appears of record, a manifest error hath happened, to the great damage of the said The Alabama Gold Life-Insurance Company defendant, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the 8th day of January, in the year of our Lord one thousand eight hundred & eighty.

[SEAL.]

C. DART,
Clerk of the Circuit Court of the United States, for the Eastern District of Texas, at Galveston.

Allowed by—

AMOS MORRILL,
Dist. Judge.

297 The foregoing writ of error endorsed as follows, to wit: "C. L. 1078. Mary A. Nichols et al. vs. Alabama Gold Life-Insurance Co. Writ of error. Filed Jan'y 8th, 1880. C. Dart, clerk."

Copy writ of error.—Filed January 8th, 1880.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Texas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you at law between Mary Alice Nichols, in her own behalf, and as guardian for her minor children, W. Ely Nichols, C. Hally Nichols, Thomas P. Nichols, and Frank Nichols, plaintiffs, and the Alabama Gold Life-Insurance Company, defendant, on the 9th day of December, 1879, in favor of the pl'ffs and against the defendant for the sum of $6,610.00, of which sum the pl'ffs,

on the 10th day of December, 1879, remitted the sum of $1,610.00, leaving said judgment the sum of $5,000.00 and costs, and said original
298 judgment was reformed and re-entered to that effect on said 10th day of Dec'r, 1879, as appears of record, a manifest error hath happened, to the great damage of the said The Alabama Gold Life-Insurance Company, defendant, as by its complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 8th day of January, in the year of our Lord one thousand eight hundred and eighty.

[SEAL.] C. DART,
Clerk of the Circuit Court of the United States for the Eastern District of Texas, at Galveston.

Allowed by—

AMOS MORRILL,
Dist. Judge.

299 A true copy of original writ of error issued in said cause: I certify.

Witness my hand and seal of the circuit court of the United States for the eastern district of Texas, at Galveston, in said district, this the 8th day of January, A. D. 1880.

[SEAL.] C. DART,
Clerk U. S. Circ't Ct., E. D. T., G.
By JAMES T. SPANN, *Dept.*

The foregoing copy of writ of error endorsed as follows, to wit: "C. L. 1078. Mary A. Nichols et al. vs. Alabama Gold Life-Insurance Co. Copy of writ of error. (Original endorsed:) Filed Jan'y 8, 1880. C. Dart, clerk. Filed Jan'y 8, 1880. C. Dart, clerk, by James T. Spann, deputy. This copy lodged in the clerk's office, for defendant in error, this 8th day of Jan'y, A. D. 1880. (Attest:) C. Dart, clerk, U. S. C. C., E. D. T., G., by James T. Spann, dept."

300 *Citation on writ of error.—Issued February 7th,* 1880.

The United States of America to Mary Alice Nichols, W. Ely Nichols, C. Hally Nichols, Thomas P. Nichols, and Frank Nichols, and Mary Alice Nichols as guardian for her minor children, W. Ely Nichols, C. Hally Nichols, Thomas P. Nichols, and Frank Nichols, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second

Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Texas, holding sessions at Galveston, wherein the Alabama Gold Life-Insurance Company, of Mobile, Alabama, is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this seventh day of February, in the year of our Lord one thousand eight hundred and eighty.

[SEAL.] AMOS MORRILL,
Dis't Judge.

301 On this seventh day of February, in the year of our Lord one thousand eight hundred and eighty, personally appeared Robert Dempsey, deputy U. S. marshal, before me, the subscriber, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, and makes oath that he delivered a true copy of the within citation to C. L. Cleveland, of the firm of Willie & Cleveland, attorneys of record for the defendants in error, Mary A. Nichols & others, at Galveston, Texas, on this the 7th day of Febr'y, A. D. 1880.

ROBERT DEMPSEY,
Deputy U. S. Marshal, E. D. T.

Sworn to and subscribed the 7th Febr'y, A. D. 1880.

[SEAL.] C. DART,
Clerk U. S. Circuit Court, East'n Dist. Texas, at Galveston.

The foregoing citation on writ of error endorsed as follows, to wit: "C. L. 1078. Mary A. Nichols, et al. vs. The Alabama Gold Life-Insurance Company. Citation on writ of error. Filed Febr'y 7th, 1880. C. Dart, clerk."

302 *Bond on writ of error.—Filed February 7th,* 1880.

Know all men by these presents that we, the Alabama Gold Life-Insurance Company of Mobile, Alabama, principal, and Thos. Henry and Adolph Praskaur, are held and firmly bound unto Mary Alice Nichols, W. Ely Nichols, C. Hally Nichols, Thomas P. Nichols, and Frank Nichols, and Mary Alice Nichols as guardian for her minor children, W. Ely Nichols, C. Hally Nichols, Thomas P. Nichols, and Frank Nichols in the full and just sum of thirteen thousand two hundred and twenty dollars to be paid to the said Mary Alice Nichols, W. Ely Nichols, C. Hally Nichols, Thomas P. Nichols and Frank Nichols, their certain attorneys, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 26th day of January, in the year of our Lord one thousand eight hundred and eighty.

Whereas, lately at a regular term of the circuit court of the United States for the eastern district of Texas, holding sessions at Galveston, in a suit depending in said court between Mary Alice Nichols in her own be-

half and as guardian of her minor children, W. Ely Nichols, C. Hally Nichols, Thomas P. Nichols, and Frank Nichols, plaintiffs, and the Alabama Gold Life-Insurance Company of Mobile, Alabama, defendant, a judgment was rendered on the 9th day of December, A. D. 1879,
303 against the said The Alabama Gold Life-Insurance Company for the sum of six thousand six hundred and ten dollars ($6,610.00) and costs of suit, and on the 10th day of December, A. D. 1879, a remittitur was entered by the plaintiffs of sixteen hundred and ten dollars ($1,610.00) reducing the judgment rendered against the said defendant to five thousand dollars and costs of suit, and the said The Alabama Gold Life-Insurance Company, defendant, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Mary Alice Nichols, W. Ely Nichols, C. Hally Nichols, Thomas P. Nichols, and Frank Nichols, and Mary Alice Nichols as guardian as aforesaid, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of October next.

Now, the condition of the above obligation is such that if the said The Alabama Gold Life-Insurance Company shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

Witness our hands and seals and the corporate seal of the said Alabama Gold Life-Insurance Company.

[SEAL.] ALABAMA GOLD LIFE-INSURANCE COMPANY,
Pr. pro. T. N. FOWLER, *Sec'y.* [L. S.]
THOS. HENRY. [L. S.]
ADOLPH PRASKAUR. [L. S.]

Sealed and delivered in presence of—

304 STATE OF ALABAMA,
County of Mobile, Southern District of Alabama:

Before me, N. W. Trimble, clerk of the circuit court of the United States for so. district of Alabama, personally came Thomas Henry and Adolph Praskaur, the sureties on the within bond, who, on oath, saith that each of them are worth in unencumbered property the amount of said bond over and above their debts, liabilities, and exemptions.

THOS. HENRY.
ADOLPH PRASKAUR.

Subscribed and sworn to this 26th day of Jan'y, A. D. 1880.

N. W. TRIMBLE,
Clerk U. S. Cir. Ct., So. Dist. Ala.

CUSTOM-HOUSE, MOBILE, ALA.,
Collector's Office, Jan'y 26th, 1880.

I hereby certify that Thos. Henry and Adolph Praskaur, the sureties who have signed the foregoing bond, are known to me as residents of Mobile, Ala., and citizens of the United States, and that I believe them to

be amply sufficient security to the amount thereof, and that the bond is good.

[SEAL.]

G. HORTON,
Spc. Dy. Collector of Customs.

305 Approved:

AMOS MORRILL,
U. S. Dist. Judge.

FEB'Y 7TH, '80.

The foregoing bond endorsed as follows, to wit: "C. L. 1078. Mary A. Nichols et al. vs. The Alabama Gold Life-Insurance Company. Bond on writ of error. Filed Febr'y 7th, 1880. C. Dart, clerk."

306 UNITED STATES OF AMERICA,
Eastern District of Texas:

I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, do hereby certify the foregoing three hundred and five (305) pages of writing to contain a true copy of the record, and of all proceedings in the cause lately pending in said court, numbered 1078 on the law docket of said court, entitled Mary Alice Nichols surviving wife of Charles Nichols, deceased, in her own behalf and as guardian of her minor children, W. Eley Nichols, C. Hally Nichols, Thomas P. Nichols, and Frank Nichols, plaintiffs, vs. The Alabama Gold Life-Insurance Company of Mobile, defendant, as the same now appear of record in my office.

To certify which witness my hand and the seal of the said court, at Galveston, in said district, this the 25th day of February, in the year of our Lord one thousand eight hundred and eighty, and of American Independence the 104th year.

[SEAL.]

C. DART,
Clerk U. S. Circ't Court, E. D. T., at Galveston,
By JAMES T. SPANN,
Deputy.

307 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the eastern district of Texas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at law between Mary Alice Nichols in her own behalf and as guardian for her minor children, W. Ely Nichols, C. Hally Nichols, Thomas P. Nichols, and Frank Nichols, plaintiffs, and the Alabama Gold Life-Insurance Company, defendant, on the 9th day of Dec'r, 1879, in favor of the pl'ffs and against the defendant, for the sum of $6,610.00, of which sum the pl'ffs on the 10th day of Dec'r, 1879, remitted the sum of $1,610.00, leaving said judgment the sum of $5,000 & costs, and said original judgment was reformed and re-entered to that effect on said 10th day of Dec'r, 1879, as appears of record, a manifest error hath happened, to the great damage

of the said The Alabama Gold Life-Insurance Company, defendant, as by its complaint appears: We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 8th day of January, in the year of our Lord one thousand eight hundred and eighty.

[SEAL.] C. DART,
Clerk of the Circuit Court of the United States for the Eastern District of Texas, at Galveston.

Allowed by—

AMOS MORRILL,
Dist. Judge.

(Indorsed:) C. L. 1078. Mary A. Nichols et al. vs. Alabama Gold Life-Insurance Co. Writ of error. Filed Jan'y 8th, 1880. C. Dart, clerk.

308 The United States of America to Mary Alice Nichols, W. Ely Nichols, C. Hally Nichols, Thomas P. Nichols, and Frank Nichols, and Mary Alice Nichols as guardian for her minor children, W. Ely Nichols, C. Hally Nichols, Thomas P. Nichols, and Frank Nichols, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Texas, holding sessions at Galveston, wherein the Alabama Gold Life-Insurance Company of Mobile, Alabama, is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this seventh day of February, in the year of our Lord one thousand eight hundred and eighty.

[SEAL.] AMOS MORRILL,
Dist. Judge.

309 On the seventh day of February, in the year of our Lord one thousand eight hundred and eighty, personally appeared Robert Dempsey, deputy U. S. marshal, before me, the subscriber, clerk of the

circuit court of the United States for the eastern district of Texas, at Galveston, and makes oath that he delivered a true copy of the within citation to C. L. Cleveland, of the firm of Willie & Cleveland, attorneys of record for the defendants in error, Mary A. Nichols & others, at Galveston, Texas, on this the 7th day of Feb'y, A. D. 1880.

ROBERT DEMPSEY,
Deputy U. S. Marshal, E. D. T.

Sworn to and subscribed the 7th Feb'y, A. D. 1880.

[SEAL.] C. DART,
Clerk U. S. Circ't Court, East'n Dist. Texas, at Galveston.

(Indorsed:) C. L. 1078. Mary A. Nichols et al. v. The Alabama Gold Life-Insurance Company. Citation on writ of error. Filed Feb'y 7th, 1880. C. Dart, clerk.

(Indorsement on cover:) No. 130. The Alabama Gold Life-Insurance Company, plaintiff in error, vs. Mary Alice Nichols in her own behalf & as guardian of her minor children, W. Ely Nichols, C. Hally Nichols, Thomas P. Nichols, and Frank Nichols. E. Texas C. C. U. S. Filed 15th October, 1880.

104-202

OFFICE SUPREME COURT U.S.
FILED
OCT 29 1883
JAMES H. MCKENNEY, Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES.

THE ALABAMA GOLD LIFE INSURANCE COMPANY
vs.
MARY ALICE NICHOLS, *et al.* } No. 130.

Brief of P. Phillips and W. Hallett Phillips in reply to motion to dismiss the Writ of Error.

The action was on a policy of insurance for $5,000 with interest, together with 12 per cent. per annum as special damage, and $500 for attorney's fees.

The whole demand was vigorously resisted, on the ground of false and fraudulent representations on the part of the insured.

The trial commenced on the 4th December, 1879, and extended to 9th December, when a verdict and judgment were rendered for the following sums:

Amount of policy	$5,000
Interest at 8 per cent	510
12 per cent. damages	600
Attorney's fees	500
	$6,610

During the trial, and before the jury had retired, numerous exceptions were taken to the rulings of the court.

One Bill of Exception was filed on the 9th December, p. 109, and another on the 8th January, p. 113. In both it is shown that the rulings of the court were excepted to during the trial.

The judgment rendered on the 9th December settled the rights of the litigant parties, and was therefore a *final judgment* on which a writ of error would lie.

On the following day the plaintiff appeared in court and without the presence or consent of the defendant moved the court for a new judgment for $5,000 on his entering a *remittitur* for $1,600; and this was granted.

The motion now made rests upon the successful issue of the plaintiff's device to deprive the defendant of the revisory jurisdiction of this court.

That this was the sole motive of the *remittitur*, is as palpable as if on entering it this had been expressly declared.

It is contended on behalf of the motion that the *remittitur* was authorized by the statute and practice of the State of Texas. But we submit that State laws and State practice have no effect where the question is as to the jurisdiction of the court.

The case of *Thompson* vs. *Butler*, 95 U. S., is also relied on to support the motion.

There a verdict was rendered for $5,066.17. Before any judgment was rendered the plaintiff remitted $66.17, and took judgment for $5000.

This necessarily fixed the amount in controversy, and led to the dismissal of the writ.

In the case before us the final judgment on application of the plaintiff is set aside and another and different judgment substituted.

The difference between this and the case cited is recognized by the Chief Justice in delivering the opinion.

> "If (says he) the *remittitur* had not been entered until *after the judgment, the case would have been different*, and if the reduction had been made *without the assent of the defendant*, more like the case of *Kannise* vs. *Martin*." * * *

What we insist on is—that the judgment of the 9th December was a *final judgment*, on which the defendant had the right conferred by law to issue his writ of error.

Over this right no control was reserved to the court below. Its action in the premises in setting aside that judgment, without the consent of the defendant, is without legal sanction, and cannot be regarded in determining the question now presented.

P. PHILLIPS,
W. HALLETT PHILLIPS,
for Plaintiff in Error

109-232

SUPREME COURT U.S.
FILED
OCT 29 1883
A. McKENNEY, Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1883.—No. 130.

THE ALABAMA GOLD LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

MARY ALICE NICHOLS, IN HER OWN BEHALF AND AS GUARDIAN OF HER MINOR CHILDREN, W. ELI NICHOLS, C. HALLY NICHOLS, THOMAS P. NICHOLS, AND FRANK NICHOLS, DEFENDANTS IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

Brief of Counsel for Defendants in Error, on Motion to Dismiss Writ of Error.

STATEMENT.

The plaintiffs below, (the defendants in error here,) by their petition in the court below, prayed for judgment against the defendant below (the plaintiff in error here) for the amount of money specified in a certain policy of life insurance, to wit, five thousand dollars, with eight per cent. interest thereon per annum, accrued and to accrue thereon, and for further special damage of six hundred

dollars for refusal to pay a certain death loss, and the further special damage for reasonable attorneys' fees of five hundred dollars, and for their general damage, and for all costs of suit, and for all further and general relief.

That upon the trial of said cause the jury, December 9, 1879, found a verdict for the plaintiffs in the sum of $6,610, enumerated as follows:

Amount of policy	$5,000
Interest at 8 per cent. from Sept. 1, 1878, to date	510
Twelve per cent. damages	600
Attorneys' fees	500
	$6,610

And on the same day, December 9, 1879, judgment for said sum of $6,610 was rendered in favor of said plaintiff Mary A. Nichols, in her own right and as guardian as aforesaid.

And immediately thereafter, on the 10th day of December, 1879, the court below still being in session, the plaintiffs below, by their attorneys of record, in open court entered a remittitur of all the amounts recovered by said plaintiffs below over and above the sum of five thousand dollars and costs of suit, leaving the said judgment to be for "the amount of $5,000 and costs of suit."

All of which will more fully appear by reference to the printed record in this case, pp. 107, 108, 110.

And thereupon, immediately after the entry of said remittitur by the plaintiffs, to wit, on the same day, December 10th, 1879, the following judgment—the final judgment in the cause—was rendered and passed by the court below, and immediate entry made thereof, as hereinafter appears, as follows:

"From the minutes, November Term, December 10th, 1879."

"Mary Alice Nichols, in her own behalf and as guardian for her minor children,
vs.
The Alabama Gold Life Insurance Company.

"This day came the plaintiffs in the above-entitled cause by their attorneys of record, and here, in open court, entered a remittitur of the following amounts recovered by them against the defendant in this cause, viz., the twelve per cent. damages, amounting to six hundred dollars; also the further sum of five hundred and ten dollars recovered as attorneys' fees, and also the further sum of five hundred and ten dollars, recovered as interest, amounting in the aggregate to the sum of sixteen hundred and ten dollars, which sum last named is the aggregate amount now remitted, leaving the amount of said judgment to be for the amount of five thousand dollars and costs of suit.

"Wherefore it is considered, adjudged, and decreed by the court that the sum of sixteen hundred and ten dollars be, and the same is hereby, remitted from the verdict and judgment entered in this cause on yesterday, and that the plaintiffs have and recover from said defendant the sum of five thousand dollars, and also all costs about this suit incurred as of the date of said judgment, and have execution therefor instead of the sum of six thousand six hundred and ten dollars, and also all costs about this suit incurred, as in said judgment is recited."

(See Printed Record, pp. 110, 111.)

It appears from the references above made that the *final* judgment rendered in the court below, being for $5,000 and costs, is below the amount required to give jurisdiction to this court.

ARGUMENT.

1. It is manifest, under the statements of facts above made, that if the judgment for $5,000 and costs rendered December 10th, 1879, is the valid final judgment,

the writ of error must be dismissed, as the amount of this judgment is below the amount necessary to give this court jurisdiction.

The first question is whether that is a valid judgment.

To determine that we must consider what is the practice of the court below.

The act of Congress of June 1st, 1872, provides as follows:

"The *practice*, pleading, and forms and *modes* of proceeding in civil causes (other than equity and admiralty causes) in the circuit and district courts shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the State within which such circuit or district courts are held, any rule of court to the contrary notwithstanding." (See Revised Statutes of the United States, chapter 18, sec. 914.)

It is obvious that the terms of the above-mentioned act of Congress embraces the subject of remittitur and the effect to be given to them.

So the term "modes of proceeding" in the said act includes the power which a State may give a judge to open a judgment and allow a remittitur.

In short, under the above act of Congress the United States circuit courts have the same practice and procedure on trials as the State courts.

The next question, then, is, what are the provisions of law of the State of Texas bearing on the action of the judge below in allowing the remittiturs.

We find the following provisions on this subject:

Chapter 15 of the Revised Statutes of Texas.—Remitter and Amendment of Judgment.

"ARTICLE 1351. Any party in whose favor a verdict has been rendered may in open court remit any part of such verdict, and such remitter shall be noted on the docket and

entered in the minutes, and execution shall thereafter issue for the balance only of such judgment, after deducting the amount remitted.

"ARTICLE 1352. Any person in whose favor a judgment has been rendered may in open court remit any part of such judgment, and such remitter shall be noted on the docket and entered in the minutes, and execution shall thereafter issue for the balance only of such judgment, after deducting the amount remitted."

See Revised Statutes of Texas, 1879, pp. 211, 212.

The courts of Texas, being *required* to allow remittiturs even after judgments, the judges of the United States circuit courts in that State are equally required to allow such remittiturs. The court below was therefore bound to allow the remittiturs, which it did allow in this cause, and so legally and properly reduced the final judgment to $5,000 and costs, and so the jurisdiction of this court does not arise. The final judgment in the court below, being thus rightfully reduced to the sum of $5,000 and costs, it is manifest this court is without jurisdiction in the premises, and so the writ of error must be dismissed.

2. There is another view of this case as conclusive against the jurisdiction of this court as the one hereinbefore considered. It is this:

The jurisdiction of this court depends upon the amount of the final judgment below if, as in this case, the defendant below pleaded neither a set-off nor a counter-claim.

The *final* jurisdiction of this court thus depending upon the amount of the final judgment, and as, in this case, the amount of the final judgment was only $5,000 and costs, this court cannot acquire jurisdiction even if the reduction of the final judgment was erroneous. Without discussing this point, it is deemed sufficient to refer to the principles announced in the opinion of this court in the case of Thompson *v.* Butler, from which we quote as follows:

"In a suit in the Circuit Court, where the defendant

pleaded neither a set-off nor a counter-claim, the claimant remitted so much of a verdict in his favor as was in excess of $5,000, and took judgment for the remainder in coin. The defendant sued out a writ of error. *Held*, that the amount in controversy, whether payable in coin or any other kind of money, is not sufficient to give this court jurisdiction."

Thompson *v.* Butler, 95 U. S. R, p. 694.

As the writ of error was sued out by the defendant below, the amount in controversy was fixed by the judgment. (Ib., 965.)

Our jurisdiction cannot be invoked until the final judgment below has been rendered, and we cannot open the record to look for error until jurisdiction has been established (Ib., 695.)

It is true that in the case of Thompson *v.* Butler, just cited, the remittitur was made immediately after the verdict of the jury and before the entering up of the judgment below; but the principle determined in that case is equally applicable to this, viz., that if the amount of the final judgment is less than the amount necessary to give this court jurisdiction the writ of error must be dismissed for want of jurisdiction.

The language of this court in Thompson *v.* Butler is explicit on this point:

"The court below retains full control of a cause until final judgment has been rendered; and it follows that if for any reason a judgment is given against a defendant in a case involving the plaintiff's cause of action, unaffected by counter-claims or set-off, for a sum less than our jurisdictional amount, we have no power, at the instance of the defendant, to correct errors that may have been committed in settling the amount.

"The trial court may refuse to permit a verdict to be reduced by the plaintiff on his own motion. If, however, the reduction is permitted, the errors in the record will be

shut out from our examination in cases where our jurisdiction depends on the amount in controversy."

Thompson *v.* Butler, pp. 695, 696.

In conclusion, we submit, with great respect, that in either of the aspects in which we have considered the case the motion to dismiss ought to prevail.

WILLIAM W. BOYCE,
Counsel for Defendant in Error.